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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii) PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union Territories)

भारत निर्वाचन आयोग
नई दिल्ली, 31 दिसम्बर, 1990

आ.अ. 1:—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग एतद्वारा 1989 की निर्वाचन अर्जी सं. 2 में दिया गया पटना उच्च न्यायालय (पटना) का तारीख 20 अप्रैल, 1990 का निर्णय प्रकाशित करता है।

(संलग्न निर्णय अंग्रेजी में छापे हैं।)

[सं. 82/बिहार/(2/85)/90]

आदेश से,
बाबु राम, अवर सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 31st December, 1990

O.N. 1.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election

Commission hereby publishes the judgement dated the 20th April, 1990 of the High Court of Judicature at Patna in Election Petition No. 2 of 1985.

ELECTION PETITION NO. 2 OF 1985

In the matter of an application under Section 80, 80A and 81 of the Representation of the People Act, 1951.

Gen. S. K. Sinha

Petitioner

Versus

Dr. C. P. Thakur

Respondent

For the Petitioner—M/s. K. D. Chatterjee, Sr. Advocate, Sachidanand Sinha, Madhusudan Singh, Binod Kumar Labh and Arun Kumar Sinha.

For the Respondent—M/s. Kanhaiya Pd. Verma, Sr. Advocate, Ganga Pd. Rai, R. N. Rai and Krishna Balak Rai.

PRESENT :

THE HON'BLE MR. JUSTICE BINODANAND SINGH.

Binodanand Singh, J.—This election petition has been filed under the provisions of Sections 80 and 81 of the Representation of People Act, 1951 (hereinafter referred to as the Act). The Election Petitioner S. K. Sinha, retired Lieutenant General, resident of 'Alakhra', East Boring Canal Road, P.O. G.P.O., Patna, P.S. Kotwali in the town and district of Patna, a defeated candidate, fought the election as an independent candidate, held in the month of December, 84, as a contesting candidate for the Lok Sabha from '35—Patna Parliamentary Constituency (Bihar)'. Dr. C. P. Thakur, resident of Razer Road, Patna, P.O. G.P.O., P.S. Kotwali, in the town and district of Patna (henceforth to be called as the respondent), who is now the sole respondent and was one of the contestants is the returned candidate, who was declared elected as the Member of the Lok Sabha from '35—Patna Parliamentary Constituency'. A prayer has been made in this election petition to declare the election to the Lok Sabha from 35—Patna Parliamentary Constituency and election of respondent from the said constituency as void.

2. Through a notification dated 20th November, 1984 issued by the Election Commission of India, 35—Patna Parliamentary Constituency was called upon to elect a Member for the Lok Sabha. In pursuance of the aforesaid notification, a programme for the election of a member of the Lok Sabha from '35—Patna Parliamentary Constituency' was published and the election was held according to the programme as indicated below :

Last date for filing nomination	27-11-1984
Date of Scrutiny of nomination papers	28-11-1984
Last date for withdrawal of candidature	30-11-1984
Date of poll	24-12-1984
Completion of election	10-1-1985

Altogether there were 25 candidates out of whom Arjun Prasad, Arjun Prasad Priyadarshi, Ashok Kumar, Ashok Kumar Yadav, Ashish Ganguli, Mohammad Idris, Onkar Dayal Singh, Kedar Nath Verma, Ganpat Rai, Chandreshwar Singh, Chandrika Pd. Singh, Jagdev Yadav, Yogendra Kumar, Ram Vijay Singh, Ravindra Nath Sinha, Ram Raj Dubey, Basant Kumar Pathak, Vishnu Shankar Sahay, Brijnandan Mahto, Shiv Bhajan Singh, Sachchidanand Sahay, S. K. Sinha (election petitioner) and Subhash Chandra Mahto, were contesting the election as independent candidates, whereas respondent was a candidate of Indian National Congress (hereinafter to be referred to as the Congress-I) and late Ramavtar Shastri was contesting the election as a candidate of the Communist Party of India (hereinafter to be called as C.P.I.).

3. 35. Patna Parliamentary Constituency consisted of Segments, namely '208—Patna East Assembly Constituency', '207—Patna Central Assembly Constituency', '206—Patna West Assembly Constituency', '211—Phulwari Assembly Constituency', '209—Danapur Assembly Constituency' and '212—Bikram Assembly Constituency'. There were altogether 69 booths.

4. Polling was held according to schedule, i.e., on 24-12-1984, counting of the ballot papers was taken up in the morning of 28-12-1984 and the counting continued till 29-12-1984. Out of 5,04,781, total votes polled, 9097 votes were rejected as invalid votes. The result was announced and the respondent was declared elected on 29-12-1984 by the Returning Officer. The votes polled in favour of all the contesting candidates need not be mentioned, since most of them cut a sorry figure in the contest but it will be useful to state that 2,14,989 votes were recorded in favour of respondent. The next highest vote was recorded in favour of Ramavtar Shastri (C.P.I.), which was to the tune of 1,42,808 and 1,17,537 votes were polled in favour of the petitioner. Thus the margin was of 97,452 votes between the successful candidate, i.e., respondent and the election petitioner.

5. The case of the petitioner is that after the polling was over on 24-12-1984, the Returning Officer Shri Raj Kumar Singh, the then District Magistrate, Patna (RW-12) made arrangements for storage of polled ballot boxes in six strong

room in the Collectorate at Patna. Shri T. N. Jha, Welfare Officer, Patna, was the Officer-in-charge of the Strong Rooms. When the petitioner went to the District Election Officer, Patna at 2.55 P.M. on 26-12-1984 to submit the names of his counting agents, to his utter surprise and dismay, he found that five rooms, where polled boxes had been stored, were open with doors half closed and several persons were inside the rooms. When the petitioner enquired from the officers and staff present there about breaking of the seals of the locks and opening of the doors of the strong rooms, the petitioner was informed that the same had been done under the orders of the District Magistrate-cum-Returning Officer (RW-12).

6. Further case of the petitioner is that according to the instructions of the Election Commission of India, contained in Chapter 13, Para 14(f) of the Hand-book for Returning Officers it has to be ensured that after all the ballot boxes have been received and stored and the rooms have been locked and sealed, no one should be allowed to go inside, until the day fixed for counting. If during this interval, for some reason or other, the room has to be opened, the Returning Officer should send for intimation to the candidates, their authorised representatives, and open the room in their presence and immediately after the purpose, for which the room is opened, is over the candidates and their representatives should again be allowed to seal the doors and the windows. Whenever it is necessary to open the room, where the ballot boxes are stored, proper entries should be made in the 'log book', giving details of the persons entering the room, the purpose of such entry, time of entry, time of exit, signature of the guards etc.

7. It has further been asserted by the petitioner that no intimation was sent to him, who was a contesting candidate, about the opening of the doors of the strong rooms, nor the procedure laid down by the Election Commissioner of India had been followed and as such the petitioner apprehended foul play and tampering or substitution of the ballot boxes under instructions of the Returning Officer (RW-12). Thereafter, the petitioner went to the Chief Electoral Officer, Shri S. Bhatnagar, and informed him about the illegal manner in which the strong rooms had been opened in the Patna Collectorate under orders of the Returning Officer (RW-12) without any information to the petitioner, who was a contesting candidate. The Chief Electoral Officer, Bihar, rushed to Patna Collectorate and on arrival, in presence of the petitioner found that the seals of the strong rooms had been broken. On enquiry the Chief Electoral Officer was informed by the staff present there that the strong rooms had been opened under the orders of the District Magistrate-cum-Returning Officer (RW-12), who also arrived soon after at that place. On being asked by the Chief Electoral Officer, the Returning Officer (RW-1), in presence of the petitioner admitted having ordered the opening of the strong rooms and said that he had done this to scrutinise ballot paper accounts and Presiding Officers' diary, to check unusual and abnormal percentage of voting at polling stations and to find out the polling stations, where 90% of more votes had been polled. The Returning Officer (RW-12) also said that he had to do this to follow the instructions of the Election Commission of India. Subsequently, the Returning Officer (RW-12) issued a Press Note, reiterating his reasons for opening the strong rooms, a copy of which has been annexed as annexure-1 to the election petition.

8. According to the petitioner's case, the plea taken by the Returning Officer (RW-12) was totally untenable, because there was no such instructions of the Election Commission of India to open the strong rooms, without informing the contesting candidates. According to the Directive of the Election Commission of India, contained in Para 20 of Appendix to letter No. 464/84 (L&O) dated 6-11-1984, relating to special measures to prevent booth capturing and to insure free and fair election the Returning Officer or the Assistant Returning Officer or authorised senior officer shall scrutinise with meticulous care the ballot paper account and Presiding Officers' diary in respect of each polling booth/station, immediately on their deposit at the storage centre. Whenever necessary, the Returning Officer, under the orders of the Chief Electoral Officer or Regional Commissioner (whenever such regional commissioner is in position) or the Election Commission, shall give notice to the candidates and/

or their agents and in their presence open the sealed packets containing the counter-foils of used ballot papers and scrutinise them to ascertain whether there is any case of irregularity or tampering, as evidenced by absence of signature or any other mark on the counter-foils or any other patent to the counter-foils. After scrutiny the packets shall be re-sealed with the seals of the Returning Officer and candidates and/or their agents. If the Returning Officer finds unusual or abnormal percentage of voting at a particular polling booth/station or unbelievable number of votes cast in any hour of the polling hours, or on a report made by the Presiding Officer about such abnormal feature or irregularity or malpractice at the time of depositing the ballot box, which might not have been intimated earlier during the poll, out of fear or threat to his person, the Returning Officer would be justified in making a presumption that some kind of malpractice or irregularity has, prima facie, been committed at that station. The Returning Officer shall report such cases with detail forthwith to the Chief Electoral Officer and the Election Commission. Till the decision of the Commission is communicated, the Returning Officer shall not open the ballot boxes of those polling stations/booths for counting, but, at the same time, shall proceed with the counting of votes in respect of other polling booths/stations. At the time of counting, the Returning Officer shall also check the ballot papers account of each polling booth as prepared at the close of the poll at the polling booths and votes secured by each candidates as recorded at the counting table and if he finds abnormal percentage of voting or unbelievable number of votes cast in favour of one candidate, and such phenomenon is noticed in quite a number of polling booths in the constituency, then the Returning Officer should keep aside the ballot papers and ballot paper account of particular polling station in sealed cover, in presence of counting agents, without taking them into account in the result sheet. Ballot papers not containing the signature of the Presiding Officer or distinguishing mark of polling booth are to be kept aside and to proceed with the counting in respect of other polling booths of the constituency. According to the petitioner, these instructions were not followed.

9. It has further been averred in the election petition that it will appear from the figures of the votes received by respondent at some of the booths that the booths were captured by and on behalf of respondent and the votes polled on these booths, by not allowing the genuine voters to cast their votes, were invalid votes. The figures of such controlled and captured booths, in different assembly constituency, falling within 35—Patna Parliamentary Constituency, according to the petitioner, are as follows :

Assembly Constituency	Number of booths	Total number of votes	Votes polled by respondent
patna East	9	6,135	5,961
patna Central	1	635	589
Danapur	1	550	513
Phulwari	11	6,925	6,569
Bikram	47	26,722	25,398
Total	69	40,967	39,030

Polling figures of each of the aforesaid 69 booths are given by the petitioner in a chart, annexed as annexure-2 to the election petition, which I do not think necessary to state.

10. Further case of the petitioner is that his election agent and his counting agents pointed out during the course of counting to the Assistant Returning Officers that votes of the booths where there had been 90% and above voting, should not be counted and the ballot boxes of such polling booths be kept aside and facts be reported to the Chief Electoral Officer and the Election Commission of India for directions. The mandatory provisions of section 100(d) (iv) of the Act have not been complied with and the Returning Officer had counted the votes of the captured booths (as

detailed in annexer-2) and also violated the provisions of section 66 of the Act and announced the result, violating the directions of the Election Commission of India, passed under Article 324 of the Constitution of India, in respect of booths where 90% and above votes had been polled, and the election may be declared void on the above mentioned violations of laws. Petitions were also filed before the Assistant Returning Officer, who received them and endorsements and signatures were made by them on the copies of the petitions.

11. It has also been alleged that during the counting of votes of the Bikram Assembly Constituency. Phulwari Assembly Constituency and Patna City Assembly Constituency, it was found that large number of ballot papers were stacked horizontally and neatly packed inside the ballot boxes of the polling stations. Looking at the size of the ballot papers containing the names of 25 candidates, it was unimaginable that ballot papers will, considering the fact that the ballot papers have to be inserted vertically through a narrow slit, get stacked horizontally inside the sealed ballot boxes. Such ballot boxes in Phulwari Assembly Constituency were shown to the Election Commission's Observer, Shri B. P. Singh, and at his instance were ordered to be set aside. However, such ballot boxes were also counted by the Assistant Returning Officers in Bikram, Phulwari and Patna City Assembly Constituencies. The Returning Officer and the Assistant Returning Officer did not pay any heed to the written requests of the petitioner's representatives and counted all the irregular votes; even where there was irrefutable evidence of booth capturing, tampering of ballot papers, horizontal stacking of ballot papers in the ballot boxes, unsigned ballot papers and ballot papers not stamped with the distinguishing marks of the polling stations.

12. According to the case of the petitioner, the plea taken by the Returning Officer (RW-12) that he had opened the strong rooms to find out case of abnormal polling is wholly wrong and untrustworthy, particularly in view of the fact that he allowed votes polled in 128 booths, where polling had been over 90% (in one case, even 100 percent) to be counted. It was further apparent that the staff inside the strong rooms were engaged in tampering with ballot papers cast in favour of the petitioner contained in the ballot boxes inside the strong rooms on the order of the Returning Officer (RW-12) at the instance of the respondent and to help respondent to be declared elected. Many ballot papers cast in favour of the petitioner were taken out of the polled ballot boxes. Ballot papers bearing Sl. Nos. 824393, 824396, 824388 and one with number not intact of Booth No. 190 of the Patna Central Assembly Constituency, were recovered in bushes near Pathar-ki-Masjid, Patna, by some young men, who brought them to the petitioner. All the ballot papers indicated that the votes had been cast in favour of the petitioner. These ballot papers were handed over to the Returning Officer (RW-12) by the petitioner before the counting of votes, but the votes of that particular polling station were also taken into account. Four more ballot papers similarly marked Nos. 824379, 824398, 824390 and 824397 of the same booth were later handed over to the petitioner, who turned handed them over to the office of the Chief Electoral Officer, along with his letter. Many signed ballot paper counter-foils of another polling booth and ballot paper of yet another polling booth, duly marked in favour of the petitioner, were recovered. The petitioner sent a telegram to the Chief Election Commissioner of India and the Chief Electoral Officer, Bihar bringing out various malpractices found during the counting, including the polling booths where 90% and above votes had been polled. No action was taken on this telegram.

13. It has further been alleged by the petitioner that initially officials of the Census Department of the Government of India were detailed for counting votes in the Patna Parliamentary Constituency, but they were changed one or two days before the date of counting, about the time when the strong rooms were opened, the Bihar Government Officials were detailed for this duty in their place. Further that some polling agents of the petitioner were initially not allowed to function at their polling stations on the plea that the letters of appointment of polling agent had to be counter-

signed by the Returning Officer. While there is no such provision in the Act. This happened at Polling Station Nos. 111, 112, 114, 115, 116, 117, 118 of the Patna Central Assembly Constituency and at polling station Nos. 36, 37, 38, 39, 40, 41 and 42 of the Patna West Assembly Constituency.

14. It has also been alleged that the polling agent of the petitioner, namely, Upendra (PW-8) at Booth 111 of the Patna Central Assembly Constituency was assaulted by the musclemen of respondent and had to be hospitalised. This booth was captured by the agents of respondent. Booths were captured at polling station Nos. 183, 184, 185, 186, 187, 188 and 189 of the Patna East Assembly Constituency, all located in one village Fatehpur. According to the petitioner election of respondent is also void because he himself, his election agent, other agents and his workers, with his consent and with the consent of the election agent, committed corrupt practices of undue influence and restrained large number of genuine voters from casting their votes. It has also been alleged that respondent was not competent to file nomination, since he was a Government Servant at the time of filing nomination papers. Full particulars of Corrupt practices alleged by the petitioner have been appended with the election petition by way of Schedules A and B.

15. The respondent filed his written statement on 17-10-1985 contesting the election petition filed by the petitioner. Besides raising legal objections, namely, non-compliance of certain provisions of the Act, such as non-compliance of sections 81, 82, 83 and 117 of the Act, read with the relevant provisions of the Code of Civil Procedure, as well as claiming prejudice on account of faulty verification and affidavit to the election petition. According to the respondent he had received information that the strong rooms were opened under the instruction of the Election Commission of India by the Returning Officer (RW-12) in accordance with the instructions issued by the Commission for official supervision. It was incorrect to say that several persons were present inside the strong rooms. The Returning Officer (RW-12) was fully competent to open the strong rooms in official capacity after following the instructions if and when necessary. The petitioner had made certain allegations which are not only vague but have been deliberately and intentionally made for the purpose of roving and fishing enquiry to support his false allegation. The allegations are vague, since the petitioner had not mentioned the names of Officers and staff from whom he enquired about the facts alleged in the petition with respect to the opening of the strong rooms. According to the respondent, the allegation of the petitioner that on enquiry from the officers and staff present there about the breaking of the seals of the locks and opening of the doors of the strong rooms the was informed that this had been done under the orders of the District Magistrate-cum-Returning Officer do not constitute an offence which can be tried by the High Court within the scope of section 100 of the Act. Apart from this the aforesaid allegation is wrong and has been denied by the respondent. According to his, the statement made in the election petition constituting the aforesaid allegations are fit to be struck off under Order 6 Rule 16 of the Code of Civil Procedure. Regarding the instructions contained in the Handbook of the Returning Officer issued by the Election Commission. The respondent has asserted that the same have no statutory force. It has been learnt by the respondent that the Returning Officer had opened the doors of the strong rooms after following the procedure laid down by the Election Commission of India. The apprehension of the petitioner in this regard about the foul play and tampering and substitution of the ballot boxes under the instructions of the Returning Officer (RW-12) are baseless, false and figment of imagination on the part of the petitioner. The case of the respondent is that when the petitioner realised on the date of poll that he will be defeated then he started making false and wild allegations against the Returning Officers. Further case of the respondent is that no booth was captured by and on behalf of the respondent and not a single voter was restrained or interfered within exercising his electoral right. The polling was peacefully held and every voter had cast votes freely and in peaceful manner. The allegation made by the petitioner in this regard is false. According to the respondent the basic and normal feature of the poll-

ing in the impugned election was high percentage of polling on account of vigilance alertness and consciousness of the voters at large and beside the high percentage of polling in isolation was not the symptom of booth capturing. Any instruction issued by the Election Commission of India in this regard was merely an executive instruction and it has got no force of law and it cannot be equated with rules, orders, muchless the Act and as such the aforesaid instruction of the Election Commission of India do not come within the ambit of section 100 of the Act. It has further been stated that in the election in question, there was no violation of instruction and circular of Election Commission of India. The allegation of violation of the provisions of section 66 of the Act in declaring the result has been denied and it has been stated that the respondent has been declared elected on the basis of securing majority of the valid votes. Regarding the ballot papers having been found stacked in Bikram Assembly Constituency, Phulwari Assembly Constituency and Patna City Assembly Constituency, the contention of the respondent is that these allegations are irrelevant and fit to be struck off and beyond the scope of section 100 of the Act. The entire allegations are based on suspicion and imagination of futile mind of the election petitioner. The respondent also denied the allegation that the Assistant Returning Officer did not pay any heed to the written request of the petitioner's representatives and that all the irregular votes were counted. These allegations are too vague and as such they are liable to be struck off under Order 6 Rule 16 of the Code of Civil Procedure. According to the respondent when the representatives of the petitioner began to feel that the election petitioner would be defeated, then they started filing frivolous petitions to delay the process of counting. The grievances made by the petitioner as contained in Annexures 3A, 3C, 3D, 3E, 3G, 3H and 3I are not genuine grievances and they were purposely made for the election petition. The allegations made against the officials are fit to be deleted since they are without furnishing material facts as required under the law.

16. The allegations made by the petitioner that the staff inside the strong rooms were engaged in tampering with the ballot papers cast in favour of the election petitioner contained in the ballot boxes inside the strong rooms on the order of the Returning Officer (R.W. 12) at the instance of the respondent and to help the respondent to be declared elected, according to the respondent are also incorrect and the same are merely hypothetical and wishful thinking of the petitioner. The allegation with respect to certain ballot papers having been recovered in bushes near Pathar-ki-Masjid, Patna, by some young men which were marked in favour of the petitioner, it has been stated that they have been made for the purpose of election petition besides being the scope of section 100 of the Act. It has further been asserted that it is incorrect to say that the signed ballot papers, counter-foils of another polling booths and ballot papers of another polling booth duly marked in favour of the petitioner were recovered. After defeat, the election petitioner started this type of wild and vague allegations. In respect of telegrams alleged to have been sent by the petitioner it has been contended that the same might have been sent to the concerned authority by the petitioner with a view to create evidence after his defeat and that was merely a preparation for filing election petition on concocted grounds. The petitioner's case that the Bihar Government officials were detailed for the duty of counting of votes in the Patna Parliamentary Constituency replacing the officials of the Census Department of the Government of India one or two days before the date of counting, has also been challenged and asserted that the same are beyond the scope of sections 100 and 123 of the Act. The assertion of the petitioner that some of his polling agents were initially not allowed to function at their polling stations as detailed in the election petition has also been controverted. The allegation of assault of the polling agent of the petitioner at Booth no. 111 by the musclemen of the respondent and capturing of the said booth by the agents of the respondents has also been emphatically denied. In this regard it has been contended that the respondent received affection of the electorate in the constituency on account of his service to the people. The respondent also denied the other allegations, including that he was in Government service at the time of filing of the nomination papers. In this regard it has been asserted that he had

resigned from his service and the same was accepted by the Government before filing of the nomination paper. It has further been asserted that the statements for allegations made in the election petition, which have not been specifically admitted, are denied. Thus in any view of the matter the election petition suffers from incurable infirmity and is fit to be dismissed.

17. On the pleadings of the parties following issues were framed:

- (i) Whether the election petition is maintainable in law?
- (ii) Whether the election petition is fit to be dismissed because of non-compliance of the provisions of sections 81, 82, 83 and 117 of the Representation of People Act, 1951?
- (iii) Whether the action of the Returning Officer and his staff in breaking open the seals and entry into the strong room in which ballot boxes were stored, was unauthorised and in violation of relevant rules and orders?
- (iv) Whether there are materials and circumstances to show that such action in opening the strong room has resulted in malpractices including substitution of ballot boxes?
- (v) Whether there are materials and circumstances to show that valid ballot papers recording votes in favour of the petitioner were cast away?

18. Before taking up the issues for consideration and discussing the evidence adduced in this case on behalf of both the parties, I may mention that the petitioner has examined 11 witnesses, including himself, whereas 12 witnesses have been examined on behalf of respondent. For the sake of convenience I summarise the evidence of these witnesses, except that of petitioner (P.W. 1), respondent (P.W. 1) and the Returning Officer (R.W. 12), whose evidence shall be dealt with in detail later on. However, Appendix—A contains the summary of evidence of the other witnesses examined on behalf of the petitioner (P.W. 1) and Appendix—B contains the summary of the evidence of the remaining witnesses who have figured on behalf of the sole respondent (R.W. 1).

APPENDIX — 'A'

P.W. No.	Name	Residence	Occupation	Evidence	Documents proved or remarks
1	2	3	4	5	6
P.W. 2	Bipin Bihari Sinha	Vill. Tilothu, P.S. Sasaram, Distt. Rohtas	Cultivation.	<ol style="list-style-type: none"> 1. On 26-12-1984 when he and Mr. S.K. Sinha reached the election office situate in building of Patna Collectorate, they found that the doors of all the strong rooms were opened, though there was no provision for opening of the strong rooms before the date of counting. 2. He saw some persons coming out of the strong rooms and some persons going inside. They were carrying some papers along with them. 3. Counting of votes was done on 28-12-84. He was one of the counting agents of Shri S.K. Sinha in Bikram segment. 4. When the ballot boxes were opened, he found ballot papers stacked horizontally in several ballot boxes as if they had been arranged and kept. 	

- (vi) Whether the result of the election was affected by serious irregularities in the counting of the votes particularly in a large number of booths where abnormal percentage of votes in favour of respondent no. 1 had been recorded?
- (vii) Whether there are materials to show that large number of booths were captured on behalf of respondent no. 1, particularly booths where, except for a handful of votes, all the votes were cast in favour of respondent no. 1?
- (viii) Whether respondent is guilty of corrupt practices?
- (ix) Whether respondent no. 1 was a Government servant at the relevant time and was not validly nominated?
- (x) Whether the allegations contained in paragraphs 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 are fit to be struck off because the points raised are beyond the ambit of sections 100 and 101 of the Representation of People Act, 1951?
- (xi) Whether the allegations contained in paragraphs 24, 26, 27, 28, 29, 30, 31, 32 and 33 of the election petition are fit to be struck off under Order 6 Rule 16 of the Code of Civil Procedure read with section 83 of the Representation of People Act as they do not contain the concise statement of material facts?

1	2	3	4	5
P.W. 2-Contd.				
				<p>5. He lodged 15 to 16 complaints before the Assistant Returning Officer in this regard and with regard to the some other irregularities, like some of the ballot papers did not contain the signature of the presiding Officer over-leaf and in some ballot boxes the ballot papers contained 'thumb impression' of same persons on each ballot papers without any signature on any of the ballot papers.</p> <p>6. In one case he found that although there were 945 voters for that booth but the number of ballot papers polled there were found to be 950.</p> <p>7. He filed three complaint petitions before the Assistant Returning Officer. Exts. 2 to 2/2</p> <p>8. Many counter-foils of the ballot papers did not contain the signatures or thumb impressions of the voters. He filed four complaints before the Assistant Returning Officers at the time of counting of votes Exts.—2/3 to 2/6</p>
P.W. 3 — Vikram Kumar	Patrakar Nagar, Kankar Bagh, Patna	Photographer		<p>1. Taken some photographs at the Collectorate on 29-12-84.</p> <p>2. Given the enlarged prints of negatives to two persons sent by Mr. S.K. Sinha of Phulwari Segment Exts. 4/1, 5 & 5/1.</p>
P.W. 4 — Brajeshwar Prasad	Pathar-Ke-Masjid, Patna,	Businessman		<p>1. Found eight signed ballot papers with stamped mark on the same at Pathar-ke-Masjid at a distance of 100 yards from the polling booth No. 190.</p> <p>2. These ballot papers bore the markings in favour of Shri S.K. Sinha.</p> <p>3. He did not send written information to the party office or to any authority concerned regarding the finding of the ballot papers.</p> <p>4. The aforesaid ballot papers, as a matter of fact, were not found by him but they were handed over to him by the children who were playing there.</p>
P.W. 5 — Ramesh Akhauri	Civil Lines, Buxar, Bhojpur.	Social worker		<p>1. His agents were not allowed to go inside several polling booths. After protest by Shri S.K. Sinha they were allowed to go inside the booths.</p>

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6

1. 3—Contd.

2. Mr. Sinha was allowed to ply six vehicles out of which some were intercepted and after complaint the same were released.
3. Sewan dozen of Jeep with Congress-I Flag banner plying without any obstructions.
4. Polling was disturbed at Kankarbagh booths.
5. Upendra (P.W.S.) was severely assaulted at Rajendra Nagar Booth.
6. Seals were not allowed to put on the locks, doors and windows.
7. On 26-12-84 at 4 P.M. watchman Rajesh came and informed about the strong room opening.
8. 8 to 9 P.M. on 26-12-1984 telegram was sent to the Election Commission of India about the opening of strong rooms.
9. A written complaint was filed for deputing counting staffs the state, other than the State of Bihar.
10. Counting staff were changed.
11. Brajesh and Shyam Prakash handed over four ballot papers which bore the stamp on the election symbol of Shri S.K. Sinha which related to Booth No. 190.
12. Four ballot papers were also handed over by the aforesaid, persons.
13. Ballot papers in Phulwari segment were found in stacked position.
14. Press photographer took photograph.
15. No action was taken by the Assistant Returning Officer on the complaint of Shri S.K. Sinha.
16. Stacked ballot papers were also taken into account.
17. Ballot papers were found stacked in Bikram and Patna East segments also.
18. Votes were found polled more than 90% in the aforesaid three segments in favour of Congress-I, which were taken into account.
19. 50 complaints were filed in this regard to the Assistant Returning Officer

Exts. 1/5

1

2

3

4

5

6

P.W. 5—Contd.

20. Central observer Shri B.P. Singh directed not to count the aforesaid votes, even then the same were counted.
21. At booth Nos. 183 to 189 of Patna East Counting Hall Mall, ballot papers were found stacked and out of 4700 and odd votes which had been counted, were in favour of Congress I candidates.
22. In booth Nos. 173 of Bkram segment, the votes polled were even 100%. The same was position in booth Nos. 17 and 94 of Patna East segment.
23. The stacked ballot papers had no mark of folding on them.

P.W. 6 Madhur Sinha Vill. Tilouthu
P.S.—Sasaram,
Dist—Rohtas. Farmer

1. Three complaints were filed by Mr. S.K. Sinha with regard to irregularities on 24, 26 and 28-12-84. Exts. 1/2, 1/7 and 1/9
2. Two more letters were sent Exts. 14 R 15.
3. Rajesh informed about the opening of strong room on 26-12-84 to 2.30 P.M.
4. He was in charge of Danapur Pandal.
5. In Patna East Segment ballot papers were found stacked. Booth Nos. 182 or 188, contained almost about 5000 ballot papers, all marked in favour of Congress-I candidate. Polling of votes was more than 90%.
6. After result of election on 20-12-84 Bipin Bihari Sinha brought nine counter-rolls duly marked

P.W. 7 Rajesh Chandra Sinha Vill. Tilouthu
P.S.—Sasaram,
Distt. Rohtas Contractor in Irrigation Department

1. He was watchman for keeping watch over the strong rooms.
2. Nand Lal informed about not allowing to put the seal of S.K. Sinha on the locks by the Officers deputed there on 25-12-1984.
3. On 26-12-1984 he was not allowed to enter inside the fencing of strong rooms.
4. At about 2 P.M. he found that the doors of all the four strong rooms which were located towards east of the road were opened.
5. At 4 P.M. Mr. S.K. Sinha came and thereafter the Returning Officer also reached near the strong rooms.

1	2	3	4	5	6
P.W. 8	Upendra	Vill. Tilori, P.S. Gaura, Distt. Gaya	Social worker	<ol style="list-style-type: none"> 1. He as polling agent at booth no. 111 at Kadirman, Patna. 2. Congress-I candidate was casting bogus votes by impersonating other voters. When he raised objection he was abused and assaulted. He was taken to Kadirman P.S. and offered tea. He submitted written report there. 3. He was admitted as an in-door patient at P.M.C.H. vide bed head ticket No. 517 and discharged on 27-12-1984. 4. Mr. S.K. Sinha was superseded in the matter of appointment as the Chief of Army Staff since his father was a class-mate of late Shri Jay Prakash Narain, who had opposed the action of late Prime Minister Smt. Indira Gandhi. 5. He cannot name any Congress-I workers who were at booth No. 111. 	
P.W. 9	Ranjit Sinha (son of P.W. 2)	Vill. Tilouhu, P.S. Sasaram, Distt. Rohtas	Engines at Jamshedpur	<ol style="list-style-type: none"> 1. He was a counting agent at Phulwari Segment on behalf of Mr. S.K. Sinha. 2. He found one ballot box containing stacked ballot papers very neatly in three rows. 3. He filed written complaint to the Assistant Returning Officer. 4. Press Photographer had taken photographs of that ballot box. 5. In the ballot boxes of one booth, over 900 votes were found, out of which 870 votes were in favour of Congress-I candidate. In spite of objection those ballot papers were counted. 6. There were also instance of tampering of paper seals and the main seals on the ballot boxes itself. On some ballot papers there was no signature of polling officer on the back of the ballot paper. 7. Sister of the father of Shri S.K. Sinha was married with his (Ranjit Sinha's) uncle. 	Ext. 1/6
P.W. 10	Mr. Sushil Bhavnagar Chief Electoral Officer, Patna.	24-Harding Road, Patna.	Chief Electoral Officer, Patna.	<ol style="list-style-type: none"> 1. On 26-12-1984 he had received a complaint from Shri S.K. Sinha. 	

1	2	3	4	5	6
				<p>2. 3.30 P.M. he went to Patna Collectorate and four of the strongrooms opened.</p> <p>3. Four duly stamped ballot papers were received from Shri S.K. Sinha but did not remember as to in whose favour those ballot papers had been marked.</p> <p>4. Shri S.K. Sinha or any person on his behalf had not made any complaint complaining that ballot boxes had been tampered with or ballot papers had been taken out from the ballot boxes before the counting of the votes.</p> <p>5. No such complaint was made to him by Shri S.K. Sinha when he along with Mr. S.K. Sinha had visited the Collectorate after getting information regarding opening of the strong rooms.</p>	
P.W. 10-	Contd				
P.W. 11	Manohar Sharma	10, Kidwaiपुरी Patna Betei shop Keeper		<p>1. He was polling agent at booth No. 93 Buchnagar, Patna on behalf of Mr. S.K. Sinha.</p> <p>2. He reached at the booth at 8 A.M. but not allowed to enter inside the booth, on the ground that the polling agent's form had not been signed by the Returning Officer. He was allowed to enter inside the booth at about 9 A.M. when Mr. S.K. Sinha came.</p> <p>3. In the evening of 26-12-1984 he heard a rumour that the strong rooms where in the ballot boxes had been kept had been opened.</p> <p>4. Not filed any complaint before any authority that he and others were not allowed to enter inside the polling booth.</p>	

APPENDIX—'B'

P.W. No.	Name	Residence	Occupation	Evidence	Documents proved or remarks
1	2	3	4	5	6
P.W. 12	Ajay Kumar	Nitigiri Apartment, Boring Canal Road, Patna.	Surgeon	<p>1. He was in charge of booth No. 111, Rajendra Nagar, Patna.</p> <p>2. Upendra (P.W. 8) was not assaulted.</p> <p>3. No irregularity or illegality has been committed in course of counting of ballot papers.</p>	

1	2	3	4	5	6
R.W. 2—Contd.				4. No ballot papers were found stacked.	
				5. He did not know as to whether any complaint had been filed by Gen. S.K. Sinha regarding any irregularity found at the time of counting of votes.	
R.W. 3	Dr. Prabhat Kumar Sinha	Alok Niketan, West Boring Central Road, Patna.	Medical Officer	1. Nothing unusual happenings had occurred on the date of polling on booth No. 111.	
				2. No polling agent of Mr. S.K. Sinha was assaulted.	
				3. Ballot papers were not found stacked in the ballot boxes of Bikram segment.	
R.W. 4	Dr. Shatrughan Saransingh	Bhikhna Phahari, Patna.	Lecturer	1. No irregularity of illegality was committed at Booth No. 100 or Patna Central Assembly Constituency near Pathar-Ke-Masjid.	
				2. The ballot papers were not found stacked in the ballot boxes at Phulwari segment.	
				3. Neither any irregularity nor any illegality was committed during the counting of ballot papers in that segment.	
				4. There was no capturing of booth.	
				5. He did not see any Congress-I worker moving on motor vehicles with Congress-I banner.	
R.W. 5	Ranjit Singh	Vill. Aroopur, P.S.—Naubapur, Distt. Patna.	Organising Secy. of Youth Cong.-I Bihar.	1. No irregularity or illegality was committed during the counting of ballot papers in Phulwari segment.	
				2. Ballot papers were not found stacked in the ballot boxes.	
				3. None had taken any photograph of any ballot box in Phulwari segment.	
				4. No workers of Congress-I were creating trouble in order to terrorise the voters.	
R.W. 6	Manoj Kumar	Vill. Kaiyar, P.S.—Sikandra, Distt. Munger.	Asstt. teacher	1. No irregularity or illegality was committed at booth No. 100 near Pathar-Ke-Masjid.	
				2. No irregularity was committed during the counting of ballot papers in Phulwari segment.	

1	2	3	4	5	6
R.W. 6—Contd.					
				3. No votes or ballot papers were found stacked in any of the ballot box at the time of counting of votes.	
				4. No photograph of any ballot box was taken in that segment.	
				5. He did not see any body on behalf of Congress-I moving with arms on the date of casting of votes.	
R.W. 7	Matadin Goel	Patna City, P.S. Chowk, Dist. Patna.	Businessman	1. No irregularity or any untowards happening had taken place at booth No. 32 at Anisabad at the time of casting of the votes.	
				2. No irregularity was found at the time of counting of ballot papers at Phulwari-sharif segment at the time of counting.	
				3. Ballot papers were not found stacked at the time of counting of ballot papers.	
				4. No photograph of any ballot box had been taken in that segment.	
				5. He had not seen any Congress-I worker moving on jeep with arms near the booth.	
R.W. 8	Rakesh Kapoor	Harimandir Gali, P.S. Chowk, Distt. Patna.	Businessman	1. No irregularity had been committed at Fatehpur booth in Patna City.	
				2. No irregularity had occurred in course of counting of ballot papers in Patna East Segment.	
R.W. 9	Motilal Joshi	Kashnuri Gali, P.S. Chowk, Patna City.	Social worker	1. No irregularity was committed at any booth of Patna East Constituency.	
				2. No irregularity had been committed at the time of counting of ballot papers in the Patna East segment.	
R.W. 10	Maheshwar Chaudhary	Vill. Panchpaika, P.S. Ujiarpur, Dist. Samastipur.	Cultivator	1. Nothing untoward happenings had happened at booth No. 32 at Anishabad in course of poll.	
				2. No irregularity had been committed in course of counting of ballot papers in Phulwari segment.	
				3. The ballot papers were not found stacked in the ballot boxes in that segment.	
				4. No photograph of any ballot box was taken in that segment.	
				5. There were four booths in Anishabad.	

1	2	3	4	5	6
R.W. 11	Arbind Kumar	Vill, Faridpura, P.S. Naubatpur, Distt. Patna.	Cultivator	<ol style="list-style-type: none"> 1. Casting of votes was held peacefully in Kankarbagh area. 2. Men of Congress-I party were not moving being armed on vehicles in that area and were not capturing booths. 3. Ballot papers were not found stacked in the ballot boxes during the counting of ballot papers of Patna East Segment. 4. It is not a fact that in some ballot boxes more than 90% of votes had been found polled in favour of one candidate. 	

19. For better appreciation of the cases of the parties, it will be useful to quote the evidence of petitioner, Gen. S. K. Sinha (P.W. 1), respondent Dr. C. P. Thakur (R.W. 1) and the Returning Officer (R. W. 12).

20. P.W. 1, the petitioner, himself has stated in his deposition that he was an independent candidate for the Patna Parliamentary Constituency in the last general election held in the month of December, 1984. He was serving in army before he joined politics in the year 1984. He joined politics after taking premature retirement from the army in the year 1983. He opted for voluntary retirement as protest since he was not appointed as the Chief of Army staff. At the time of his retirement he was Vice Chief of Army Staff. When he took premature retirement in December, 1983, at that time he had thought that he will not join the politics. He arrived at Patna and found that there were large number of people who wanted him to take active part in politics. When he landed at Patna Airport, he was received thereby more than 5000 people. The Presidents of major opposition parties, other than the Communist Party invited him to join their parties. He declined to do so. However, as time went on he found increasing pressure on him from friends and wellwishers to take active part in politics. In March, 1984, when he was invited by the Presidents of two political parties, namely, S/S Chaudhary Charan Singh and Atal Bihari Vajpayee to address in Mahatma Hall, New Delhi. Some members of the parliament on his perception of threat to India's security with special reference to Pakistan, as a citizen, he felt that it was his duty to place his individual views in this very important issue before the people. This was particularly important because at that time the general elections were around the corner and the ruling party, including the then Prime Minister himself, was whipping up a war hysteria. He found that his non-attendance had caused a controversy all over the country and wherever he went he came across a large number of people urging him to come forward and join the politics.

21. He has further stated that in the last general election for the Patna Parliamentary Constituency he was allotted 'bicycle' as his symbol for election. The main contestants in this Constituency were Dr. C. P. Thakur, a Congress-I candidate, Mr. Ramavtar Shastri, a C. P. I. candidate, who was sitting member of the Parliament from this constituency, and himself, i.e., the petitioner. The polling date was 24th of December, 1984. They were allowed six vehicles to be used for election duty by every candidates on the polling day and he was also allowed six vehicles. On the date of polling, i.e., on 24th December, 1984, his vehicles were being stopped by the police and in spite of the drivers of the aforesaid vehicles saying that the same were permitted vehicles, the vehicles were not being allowed to move. His representatives took up

this matter with the Returning Officer, who ordered for release of the aforesaid vehicles.

22. On the date of polling, i.e., on 24th of December, 1984 when he went around at some of the polling booths, he found that his polling agents were not being allowed to go inside the polling booths on the plea that the agent's forms had not been counter signed by the Returning Officer or by his representative. There was no requirement for such counter signature on the aforesaid forms. He went and complained the Returning Officer in the Control Room and he then flashed a wireless message to his officers to permit his polling agents to go inside the booths. He subsequently found that within an hour his polling agents were admitted inside the polling booths.

23. There were about 1277 polling booths in the Patna Parliamentary Constituency and it was not possible for him to watch all the booths. However, his polling agents were not admitted inside the polling booths. He complained in this regard to the Returning Officer as stated earlier. The polling agents were allowed to see empty ballot boxes at the commencement of the poll. On the polling day some of the polling booths were disturbed by some musclemen. In a quite few cases, the people going on the vehicles with Congress-I flags on these vehicles were disturbing the booths. His polling agents were assaulted at a few places. As a case in point, one polling agent, namely, Upendra (P.W. 8) at polling booth no. 111 situate at Rajendranagar, Patna, was severely beaten up. He had to be admitted for couple of days in Patna Medical College and Hospital. There was another similar instance in the booths at Kankarbagh and in Patna City at booth no. 43 some people brandished pistols and tore of the relevant papers which were with his agents. In the evening of 24th December, 1984, he sent a telegram to the Election Commission with a copy to the Chief Electoral Officer and the Returning Officer giving some instance. Copy of the telegram has been marked as 'X' for identification. After the polling the ballot boxes were to be brought to the strong rooms in the Collectorate. In the evening of 24th December, 1984, he had visited that area and found that it had been fenced all around with barbed wire. There was a gate in the south facing road in the fence. The road was running from south to north and east of the road in a double storied building there were four rooms which were earmarked as 'Strong Rooms' for keeping the ballot boxes. In addition in the aforesaid building west of the road, one room was earmarked for storage of ballot boxes. Thus, in all, there were five rooms in the said two buildings being utilised for this purpose. Four rooms were in a row on the ground floor. The gate was approximately at a distance of 20 to 25 yards. All the four rooms were facing west having doors in front and the doors

of all the four rooms were visible from the gate, but the door of one of the rooms which was in the other building, east of the road, was not visible from the gate. He was entitled to have a watchman to keep an eye on the strong rooms. Mr. Raj Kumar Singh was the District Magistrate-cum-Returning Officer. He wrote a letter to the Returning Officer to allow him to have a watchman to look after the strong rooms. He sent three names. The said letter has been marked as Ext. 1.

14. He had requested in the aforesaid letter to the Returning Officer to allow his watchman to put seals on the locks of the strong rooms. He got the permission vide letter dated 25-12-1984 from the office of the Returning Officer. His watchman was told not to enter inside the gate and keep an eye on the strong rooms from outside. He, therefore, could not affix the seals on the locks of the strong rooms. This is on the basis what the watchman reported to him and also on the basis of the written information given to him. It is located inside the Patna Collectorate and was adjacent to the strong rooms. It is on the west of the north-south running road, on the other side of which the strong rooms located. There were four strong rooms on east of the road. The District Election Office was along side the fifth strong room, west of the north-south road inside the Collectorate premises. On 26th December, 1984 in the afternoon he went to the District Election Office with counting agents forms. He was asked to handover the list of counting agents who would be his representatives at the time of counting of the ballot papers on 28th December, 1984. He went there and found that the doors of all the five strong rooms were opened. He was accompanied by his friend Mr. Bipin Bihari Sinha (P.W.2). He was allowed to go inside the gate because he was going to the election office and when he went inside he found to his amazement that the doors of all the five strong rooms were opened and some people were working inside in each of the rooms. There was an officer sitting on the verandah near the strong rooms who was said to be in charge of this operation. He went up to him and inquired why the strong rooms had been opened without prior intimation to him as one of the contesting candidates. He told him that the strong room had been opened under the orders of the Returning Officer. He felt that something irregular was being done. He could see people with papers in their hand working in the strong rooms and he could also hear the occasional sound of metallic boxes being lifted or placed on the ground. On this he decided to go immediately to his office on Exhibition Board to take orders on this subject. He found from Chapter XIII, Para-14 of the Handbook for Returning Officer that the strong rooms could only be opened after giving prior notice to the contesting candidates and the strong rooms had to be opened in presence of the representative of the contesting candidates. Thereupon he went to Patna Secretariat to report about this matter to the Chief Electoral Officer, Bihar Shri S. Bhatnagar. Incidentally when he saw the strong rooms opened it was 2.55 p.m. on 26-12-1984. He made a verbal complaint to the Chief Electoral Officer about the unauthorised opening of the strong rooms. He also told him that he suspected that the ballot boxes were being compared. He appeared surprised to hear about his complaint. He immediately telephoned to the Returning Officer in his presence and he could only hear his part of the conversation. He requested Mr. Bhatnagar to personally visit the site and see things for himself. He agreed to do so. They proceeded to the strong rooms in the Collectorate and reached there at 4 p.m. When they arrived there, some of the doors of the strong rooms were still opened other were closed. The Officers supervising the operation told them that the strong rooms had been opened under the orders of the Returning Officer. Very soon within a couple of minutes the Returning Officer arrived at the scene. He stated that he had acted in accordance with the directions of the Election Commission. He disputed his contentions. At that time there were about 10 to 13 people standing close by Mr. Bhatnagar suggested that they should go inside a room where they could discuss the matters. Mr. Bhatnagar, Mr. P. K. Singh, the Returning Officer, and himself went in a room in the Collectorate where they had discussion for 20 to 25 minutes. The Returning Officer kept insisting that he opened the strong rooms in accordance with the instructions of the Election Commission to check the Presiding Officers' diaries and ballot papers accounts. He asked him if he had any instruction, to this effect and he

gave a non-committal reply and did not produce any document to support his action. On the other hand he repeatedly referred to the handbook for Returning Officer. Mr. Bhatnagar heard both of them and did not intervene in the discussions as such. On this he ultimately mentioned that he was not satisfied with the reasons given for the opening of strong room nor with the manner in which strong rooms were opened. He left S/S Bhatnagar and P. K. Singh in that room after stating that he will be making a complaint about this to the Election Commission. When he came out of this room and went near the gate, there were 30 to 40 people. On seeing him they raised slogans and some asked him what had happened. Those people were his supporters. His further statement in this regard is that when he went to the strong rooms at 2.55 p.m. his watchman was not there. He looked for him and found him missing. Again when he went at 4 p.m. he did not check whether he was there or not. He was with Mr. Bhatnagar the Chief Electoral Officer. Subsequently he was told that he was there when he came out at 4 p.m. and that he had come to him to report about the strong rooms having been opened only a few minutes after he had left his office to go to the election office for handing over the counting agents forms.

25. On 27th December, 1984 he found that all the local newspapers carried reports about the opening of the strong rooms and referred to a press statement having been issued by the Returning Officer on the subject. The original press statement signed by the Returning Officer was also brought to him. The Press Statement has been marked as Ext. 1/1. In this connection he also sent a telegram to the Election Commission. A carbon copy of the aforesaid telegram has been marked as Ext. 1/2. On 27-12-1984, late in the evening two gentlemen M/S Brajeshwar Prasad and Shyam Singh came to his office at about 9 p.m. with four ballot papers all marked in his favour. These four ballot papers were torn but the number on the three of the ballot papers was available. The number on the fourth ballot paper was missing. All these four ballot papers bore the signature of the Presiding Officer Mr. Bharat Prasad on their reverse. They pertained to booth no. 190 of Patna Central located at Pathar Ki Masjid. All the four ballot papers bore marks in his favour. He kept these ballot papers and on the following morning he had taken the photographs of these ballot papers. These ballot papers were sent to the Returning Officer through the election agent. Carbon copy of the covering letter has been marked as Ext. 1/3. Copy of this letter was also sent to the Chief Electoral Officer and to the Central Observer deputed by the Election Commission to observe election in Bihar. On 28-12-1984 in the morning the aforementioned Brajeshwar Prasad and Shyam Singh came to him with four more ballot papers and those ballot papers were from the same booth, i.e. booth no. 190 of Patna Central located at Pathar Ki Masjid. The numbers on these four ballot papers were intact. These ballot papers were marked in favour of the petitioner and on their reverse bore the signature of Sri Bharat Prasad as the Presiding Officer. He took these four ballot papers to the office of the Chief Electoral Officer in the Secretariat personally. He handed over the same to Mr. Tarkeshwar Prasad, Joint Chief Electoral Officer and obtained his signature. Those ballot papers were found by the aforesaid persons near a bush on the road. One more ballot paper was brought to him on 31-12-1984 and this ballot paper bears the signature of Shri Prameshwar Prasad, as Presiding Officer, on the reverse of the said ballot paper. This ballot paper was also marked in favour of the petitioner and it pertained to polling booth no. 32 located at Anishabad of Patna West. Ballot paper has been marked as material Ext. 1. Nine ballot papers' counter foils were also brought to him after the declaration of the result of the election, which pertained to polling booth no. 30 of Patna West. Eight ballot papers' counter-foils were intact and the 9th was torn and had pan (betel) marks on it. These ballot papers' counter-foils were found from a betel shop. Counter-foils of these ballot papers have been marked as material Exts. 1/1 to 1/9.

26. On 27-12-1984 the petitioner wrote a letter to the Chief Electoral Officer in which he requested that counting should be conducted under the supervision of the officers from outside Bihar. He made this request in view of the fact that the strong rooms had been unauthorisedly and in an irregular manner opened on the previous day. The office copy of the said letter has been marked as Ext.

15. In the evening of the 27th December, 1984 he came to know from his workers that the Returning Officer had changed the staff initially detailed for counting. These staff were from the Census Department of the Government of India located at Patna and was changed only one or two days before the date of counting. This staff was replaced by the Officers of the Government of Bihar almost entirely from Patna Collectorate. On getting this information his suspicions were further aroused and he instructed his counting agents to be very vigilant at the time of counting and file written complaints whenever they came across any irregularity. He also asked them to obtain receipt for every complaint filed by them.

27. On the date of counting of votes, i.e., 28th December, 1984, as he had earlier stated he handed over four ballot papers marked in his favour to the Returning Officer and four more ballot papers marked in his favour to the Chief Electoral Officer. He went to the Collectorate where counting of the ballot papers was taking place. It was being done in six pandals within the campus of the Patna Collectorate. There were six assembly segments of Patna Parliamentary Constituency and there was a separate pandal for each one of these six segments. When he arrived there a little after 11 a.m. some of his counting agents mentioned to him that they had come across a number of irregularities. He went into that Pandal and found that there was a ballot box in which the ballot papers were all horizontally and neatly stacked. These ballot papers with 25 names each were fairly long and they had to be folded and then inserted through a narrow slit on the top of the ballot boxes. Seeing this he can say that this was very serious irregularity and he immediately made a written complaint which he signed himself and handed over to the Assistant Returning Officer who was conducting the counting operation. The office copy of this complaint is Ext. 116.

28. In spite of the protest made by the petitioner the stacked ballot papers in the ballot box were duly counted. At that time there was a press photographer in the Pandal who took a picture of the stacked ballot box. However, the counting staff asked him to leave the Pandal and he went away. Thereafter he decided to bring this matter to the notice of the observer from the election commission because his representations to the Returning Officer and his staff were being ignored. He went to the Pathmoura Hotel where the observer Shri B. P. Singh was staying. He met him and requested him to visit the counting site and see how the stacked ballot papers were being presented for counting. Mr. B. P. Singh visited the Pandal in the afternoon and stopped the counting of the ballot boxes in which ballot papers were horizontally stacked. A few hours later even these ballot papers were counted. During the night of 28th/29th December, 1984 several ballot boxes in the Patna City segment were again found horizontally stacked with ballot papers by the counting staff. They made written complaints against this. There were several booths in Bikram, Phulwari and Patna City segments which had such horizontally stacked ballot papers and about which he filed written complaints before the counting supervisor including the Assistant Returning Officer who was the in-charge of the counting. Besides, horizontally stacked ballot papers in ballot boxes, he came across a large number of cases in which more than 90 percent votes had been polled in favour of one candidate. According to the rules on the subject, counting of the votes in booths for more than 90 per cent for any one candidate is to be done only after obtaining clearance of the Election Commission. In these cases no such clearance was obtained. There were on scrutiny 135 such polling booths. In one case that is booth no. 174 of Patna City 100 per cent votes were polled in favour of one candidate. There were 675 votes all in favour of Congress-I candidate. There were besides two booths, where the number of votes polled was more than the number of votes for two booths. These are booth no. 173 of Bikram segment, where number of voters was 545 and votes cast were 550 and booth no. 94 of Patna City segment, where the number of voters were 419 and the votes cast were 453. He objected to this but his objections were not taken into account and these votes were duly counted.

29. The petitioner was supplied with the list of the polling stations by the District Election Officer. The District Elec-

tion Officer was also the Returning Officer for the Patna Parliamentary Constituency. Booth No. 94 of Patna City segment had 419 votes and booth no. 173 of Bikram segment had 545 voters. Before the declaration of the election result he also sent a telegram after the first day of counting on 28.12.1984 to the Election Commission complaining about the stacked ballot papers in the ballot boxes and other irregularity found during the counting. Carbon copy of the telegram is Ext. 1/7. After the declaration of the result a ballot paper and nine counter-foils that were brought to him were kept by him in his custody. He did not hand over these things either to the Returning Officer or to the Chief Electoral Officer. Subsequently towards the end of January, 1985 he went to the Election Commission to inquire as to what action had been taken on the complaints made by him. This statement was rightly objected to by the learned counsel appearing for the respondent since it was beyond the pleadings.

30. For taking comparative view of the cases of the parties I consider it desirable to enumerate here the statement of respondent who has figured as R.W.1. R.W.1 Dr. C. P. Thakur has stated that he was a candidate of Congress-I party for '35-Patna Parliament Constituency' in the election held in the year 1964. He was the successful candidate in that election. Twenty five candidates had contested the election. The votes which were cast in his favour, as declared, were more than 97000 from the votes cast in favour of the petitioner. Mr. Rajkumar Singh, the District Magistrate, Patna, was the Returning Officer of the Constituency in question. There were six Assistant Returning Officers and were of the rank of the Sub-divisional Officer. Deputy Collector Land Reforms and Additional District Magistrate. All the ballot boxes utilised at the polling booths had been sealed at three places. There used to be one paper seal inside the ballot box. Another seal used to be on the slit of the ballot box and the third seal used to be on the covering of the ballot box. All the forms which were used by the Presiding Officer were also sent in a sealed cover. The sealed ballot boxes and sealed covers containing the papers were kept in the strong rooms in safe custody by the Returning Officer. No seal of any candidate of the last election or his constituency was put at the locks of the strong rooms. Seal of the Returning Officer was put at the locks of the strong rooms. None of the candidate or agents of any of the candidates were refused to put their respective seals on the locks of the strong rooms. He had no talk with the Returning Officer-cum-District Magistrate, prior to casting of the votes. There was no tampering of any ballot box at any stage anywhere. He had collected information regarding the allegations made by the petitioner in the election petition with respect to the opening of the strong rooms. Form-16, which is submitted by the Presiding Officer and the diary containing detailed information regarding the voting of the ballot papers at the booth. According to his information the Returning Officer had opened the strong rooms in compliance with the certain orders of the Election Commission of India. He had visited the counting hall which was located in Patna Collectorate. His counting agents as well as of the petitioner and other candidates were present there in the counting hall. Except candidates, against and officials, none else were allowed to enter into the counting hall. The three seals on the ballot boxes used to be shown to the agents of all the candidates and the agents present there before opening the ballot boxes. No seal of any ballot box of his Constituency was found tampered at the time of counting of votes. It is not a fact that several booths were captured and irregularities were committed at several booths. No attempt was made or action was taken from his side or on his behalf in order to capture any booth or commit any illegal act in course of casting of votes at any time during the election. It is not a fact that the ballot papers were found stacked in some ballot boxes of some of the booths of Bikram, Phulwari and Patna East. It is also not a fact that the ballot papers were found kept stacked horizontally in the ballot boxes of certain booths and it is also not a fact that irregularities were committed at any booth or any ballot paper was tampered. It is not a fact that several ballot papers which were polled, were without the signature of the Presiding Officer. He was not concerned in any manner with the opening of the strong rooms and the report sent by the Returning Officer to the Election Commis-

sion of India. No irregularity was committed at any booth of Ikarna Central Assembly Constituency, particular in booth no. 190. No complaint was filed at that booth with respect to any kind of irregularity committed there by any agent of any candidate. His counting agents and polling agents were present at each and every booth. Devta Prasad Choudhary was his election agent. It was also not a fact that the counting staff were changed in course of counting of votes. It was not a fact that some polling agents were refused entry at any polling booth on flimsy grounds. He had not engaged any musclemen in course of election campaign and casting of votes. It was also not a fact that Upendra was assaulted by his agent. It was not a fact that he and his agents committed any kind of corrupt practices. Before filing any nomination as a candidate for election, he had resigned from his post under the Government which had been accepted before filing of the nomination papers. The ballot papers of 38 booths were not counted and taken into consideration in declaring the result of the election. The ballot papers of these booths were not counted on account of the difference of margin between the votes cast in his favour and the second candidate, namely, Sri Ramavatar Shastri because that would not have affected the result of the election.

31. The Returning Officer, Mr. Raj Kumar Singh (R.W. 12), has stated that he was posted as the District Magistrate-cum-Collector, Patna, in the year 1984. At the time of last general election held in the year 1984 he was the Returning Officer. He was all through impartial in course of the last general election. He had no connection or inclination or any kind of helping attitude towards any contesting candidate. He has further stated in his examination-in-chief that three seals are used in the ballot boxes after close of the casting of the votes—one paper seal inside the ballot box, the other was seal on the slit and another seal is given on the cloth cover of the ballot box. The Presiding Officers used to be instructed at the time of election to take the signature of the polling agents on the paper seal and on the cover seal if a polling agent of the particular party so likes. He had given Form-16 to the Presiding Officers to send the same duly filled up after the poll. The Presiding Officers had also to submit diary containing different columns regarding the details of the polling. The diary contained the number of total votes issued and polled at a particular booth. The Presiding Officers had also to indicate in the diary the details about any irregularity, violence, capturing of booth, taking away of the ballot papers etc. That diary was to be signed by the Presiding Officer. There were more than a thousand booths in Patna Parliamentary constituency. The papers were sent by the Presiding Officers of each booth in separate packets. This witness could not say about the full details of the papers which were to be sent by the Presiding Officers to him as the returning Officer but he could give the details of most of the papers. They were ballot papers account, paper seal account, counter-foils of the used ballot paper etc.

32. The Returning Officer (R. W. 12) has further stated that the Presiding Officers had followed the instructions of the Election Commission in sending the packets after the close of the polling. Diaries of the Presiding Officers and Form-16 were sent separately in sealed cover. The Officers had been earmarked to receive the sealed ballot boxes and all the connected papers sent by the Presiding Officers after the casting of the votes. Strong rooms had been arranged for keeping the ballot boxes and the connected papers sent by the Presiding Officer. Receipt of the ballot boxes continued till the forenoon of 25-12-1984 from different booths. Mr. T. N. Jha was the in-charge of the strong rooms and he had locked and sealed the locks of the strong rooms. To his knowledge no candidate had made any request that he would put his own seal on the lock of the strong rooms. All the connected papers along with the accounts of ballot papers and the Presiding Officers' diaries were kept on the ballot boxes of a particular booths in the strong rooms. That is the rule and practice and accordingly it was done by the strong rooms in-charge under his direction. He was required to send report to the Election Commission of India and a copy of the same to the Chief Electoral Officer regarding the polling of more than 90% of votes at any polling booths as also about any incident of capturing of booth. He sent report to the Election Commission after examining the Presiding Officers' diary and

Form-16 with respect to the election in question. He had received an application from Gen. S. K. Sinha, the election petitioner, to allow his representative to remain in front of the strong rooms all along till the ballot boxes were in the strong rooms, which he had allowed, but he cannot give the exact time when the strong rooms were locked and seals were put because they were done by the Officer concerned who had been deputed for the purpose. The application of Gen. S. K. Sinha was received by him on 25th December, 1984 when the storage of the ballot boxes in the strong rooms had been completed. The scrutiny of Form-16 and other connected papers with respect to the casting of votes in the election was done by the Assistant Returning Officers, who were six in number and were for each assembly constituency. He had not visited the strong rooms personally. After receiving information regarding the arrival of the Chief Electoral Officer, he went to his Office at Collectorate, but the Chief Electoral Officer was not there and after getting information that the Chief Electoral Officer was in the strong rooms, he went there. He (R. W. 12) further stated that it is not a fact that the strong rooms had been opened in order to tamper with the ballot boxes to help a particular candidate. These allegations are absolutely false and incorrect and there was no question of tampering with the ballot boxes and it was never done in the strong rooms. Counting of ballot papers of 25 to 30 booths were not done since it had been stopped by him or by the Assistant Returning Officer. There were 600 to 1000 voters at one booth. Patna Parliamentary Constituency had been divided in six segments containing one Assembly Constituency in each segment. Counting Hall for counting of the ballot papers of different segments were constructed separately within the Collectorate campus. He had taken all precautions or proper counting of the ballot papers in every counting hall. Senior Officers had been deputed as the Assistant Returning Officers for each of the counting hall. Each of the Assistant Returning Officer used to supervise the counting of votes in his counting hall and if there was any complaint against any Assistant Returning Officer it was performed before him. He had visited the counting hall. No irregularity had been committed in the counting of the ballot papers. All the rules and instructions with respect to the counting of the ballot papers had been strictly followed.

33. This witness (R. W. 12) has stated in his cross-examination that he took over charge as the District Magistrate, Patna, in April or May, 1983. According to his knowledge the officer posted as the District Magistrate at Patna enjoys the confidence of the State Government. The Returning Officer is the king-pin of the electoral machinery of a particular constituency. In view of the aforesaid position it was his duty to be aware of all the statutory provisions as well as the circulars or directions given by the Election Commission. There is a Hand-book for the Returning Officer, containing all the instructions issued by the Election Commission of India. He had made himself familiar with the instructions of the Election Commission contained in the Hand-book before the election concerned. This instruction relates to the various process of election beginning with the preparation of the election programme. He had followed all the instructions contained in the Hand-book. He was not only the Returning Officer of "35 Patna Parliamentary Constituency", but was also Returning Officer for Barh Parliamentary Constituency and the assembly constituency of the ensuing assembly constituency election. He had experience of conducting election while he was posted as the Sub-divisional Magistrate at Jamui, of Gram Panchayat election. He had carried out the duties as the Returning Officer to best of his ability as set out in paragraph-1 of the instructions issued by the Election Commission contained in the Hand-book of the Returning Officer. He had called a meeting of the contesting candidates, their representative and the members of the political parties, as far as he remembers, prior to holding of election. He had no special attachment with the respondent Dr. C. P. Thakur. His impression was that the ballot boxes used in the last general election were of uniform in size. Every ballot box contains slit. He cannot say the length and width of the slit of the ballot boxes. After referring to the material Ext. 1 (ballot paper) he (R. W. 12) stated that this kind of ballot papers was used in the last general election. Counter-foils are detached from the ballot papers when the ballot papers are issued

to the voters. Ballot papers cannot be put inside the ballot box without being folded several times in view of the size of the slit of the ballot box. Ballot papers are signed by the Presiding Officer before they are handed over to the voters for casting their votes. The Patna Parliamentary Constituency had been divided into six segments having separate numbers. He did not remember whether on the ballot paper the segment number and booth number were also given. He stated that distinguishing marks had been given on ballot papers. He did not remember whether he had appointed any Prameshwar Prasad as the Presiding Officer. He did not recognise the Signature on the ballot paper, marked as Material Ext. I. This material Ext. I contains the booth number and assembly segment number. The ballot and the necessary papers sent by the Presiding Officers were received by the Strong Rooms incharge. Mr. T. N. Jha was the incharge of the Strong Rooms, who was District Welfare Officer. He did not remember as to how many persons or how many officers were deputed as his assistants. The Returning Officer (R. W. 12) has further stated that as far as he remembers one Deputy Collector with one Head Assistant and some Assistants were posted for each assembly constituency for the help of the strong rooms incharge. They had been deputed under his order. He is conversant with the instructions of the Election Commission in respect of the reception of the ballot boxes and the connected papers brought by the polling party as also the manner in which they were to be dealt with. The Officers were given a check list and they were instructed to gross check the items like the ballot boxes, Statutory and non-statutory packets. All the items enumerated in the check-list were deposited by the polling parties and those ballot boxes and the connected papers were used to be kept in the strong rooms. In the strong rooms there were one square for each booths on which ballot boxes and other connected papers were to be kept. There were instructions that the statutory and non-statutory packets were to be kept on the ballot boxes of the booths concern at the top of the ballot boxes. At that time this aspect that these papers may be required by the Election Commission for the purpose of information before the counting of the ballot papers had not occurred to him. After the ballot boxes and the connected papers had been kept in the strong rooms he had been told by the A.D.M. that the information may be required by the Election Commission regarding high percentage of votes and any other suspicious circumstances. He was required to scrutinise the papers sent by the Presiding Officer before the counting of the votes for information of the Election Commission but he knew about this instruction at a later stage. The scrutiny of the Presiding Officers' diaries and ballot papers accounts could not be done at the time of the receipt of the ballot boxes and the other connected papers since it was not feasible in view of the large number of polling parties arriving at the headquarters. He further stated that in view of the difficulties which were felt in course of the last election, the Election Commission revised the procedure and directed that the additional copy of the Presiding Officer's diary and the accounts of votes should be prepared and that copy should be scrutinised after the receipt of the ballot boxes and should not be kept in the strong room.

34. He (R. W. 12) further stated that the instructions contained in paragraph—20 of Ext. 6 were not strictly followed in the sense that the scrutiny was not done simultaneously as soon as the ballot boxes and the either connected papers were received, but it was done at a later stage. In case of repolling strong rooms had to be opened in past also and to his knowledge not otherwise. Leaving out where the repoll had been ordered and for which he was concerned, there was no opening of strong room after locking and sealing and before counting of the ballot papers. Statutory rules require that the counter-foils of the ballot papers should be kept in a packet, which should be properly sealed by the Presiding Officers concerned. At the time of counting of votes, the Assistant Returning Officers and the counting Supervisor may scrutinise the counter-foils as per the instructions referred to and which were brought to his notice. Repoll is not held unless there is some report of malpractice or some suspicion in connection with the casting of the votes. The counter-foils in usual course cannot be expected to be outside unless there are instances of snatching of the ballot papers at a particular

booth. He did not remember as to whether there was any report regarding the missing or snatching of any counter-foil along with the ballot papers from the Presiding Officer of any booth. If such happenings would have taken place it should have been reported to him. The voters are required to sign on the counter-foils. About the Presiding Officer he was not sure whether there is any such provisions or not under the rules and instructions. If the packets containing the counter-foils were to be opened before the counting of the ballot papers in the ballot boxes the contesting candidates or their representatives had to be called. Repolling is done under the orders of the Election Commission. He was responsible for the arrangement for the safe custody of the ballot boxes after the casting of the votes.

35. The Returning Officer (R. W. 12) has further stated that the strong rooms were located on both sides of the road which was running north to south and the strong rooms has been faced with barbed wire. The distance between the barbed gate and the nearest strong rooms was one furlong. He cannot say whether the locks of all the strong rooms were visible from the barbed gate. After referring to Ext. 1/2 the returning officer (RW 12) said that under his orders Mr. W. N. Singh the Assistant Election Officer had passed the order allowing the representative of son S. K. Sinha to remain near the strong rooms. He had not obtained the permission of the Election Commission or the Chief Electoral Officer for opening the strong rooms. The instructions, as contained in Chapter XIII paragraphs 14 of the Hand book were followed, in the sense that the representative of the petitioner, i.e. Gen. S. K. Sinha was already there. The case of other contesting candidates the aforesaid instructions were not followed. The witness (R.W. 12) further stated that the aforesaid sentence is his answer to the question put by the cross-examining counsel and set an explanation. Gen. S. K. Sinha's representative was physically present there at the time of opening of the strong rooms. This information was received by him through his subordinate Mr. T. N. Jha. The strong rooms were opened in his absence but under his instructions by the strong rooms incharge Mr. T. N. Jha. He was not informed by Mr. T. N. Jha that he had told the representative of Gen. S. K. Sinha that he (T. N. Sinha) was going to open the strong rooms. The procedures provided under the rules had been followed in the last general election. After the ballot paper is torn off from the counter foil, the same is handed over to the voter after taking the signature of the voter on the counter-foil. The Presiding Officer is supposed not to allow a voter to go outside the booth without inserting the ballot papers in the slit of the ballot box. At the time of issue of ballot papers, the presiding officers fold the ballot papers and the voters after putting necessary marks against a particular candidate on the ballot paper fold in the same manner and puts it inside the ballot box. In case any voter without casting the vote goes away with the ballot paper it should be noted in the Presiding Officers diary. The Assistant Returning Officer had examined the Presiding Officers diaries. The report, which was submitted to the election Commission, was finally sent by me. The witness clarified that he had sent his own report to the Election Commission based on the report of the Assistant Returning Officer. So far as he remembered there was no instance of any voter having gone away with the ballot paper as recorded in the Presiding Officers diaries and as reported by the Assistant Returning Officers. Mr. T. T. Jha and his party who were incharge of the strong rooms, where different from the persons concerned with the polling, so far as he recollected. Approximately in 5 to 10 minutes the checking of the ballot papers and the papers with the check list could have been done in respect of one booth. Checking of the Presiding Officers diary normally is expected to take about 20 to 25 minutes. The Assistant Election Officer had informed him at his residence that the chief electoral officer had come to the strong room. He had informed him on phone. The Chief Electoral Officer had not contacted him on telephone in this regard. He did not remember as to whether the Chief Electoral Officer had rung him up and talked with him on phone in connection with his visit at the collectorate. The A.D.M. Incharge of the election had informed him after the strong rooms were closed that there were instructions by the Election Commission of India to send report about the instances where there had been extraordinary percentage of poll of any

law practice or suspicious circumstances as reported in the Presiding Officers' diaries and he told him that this report was to be sent after scrutinising the Presiding Officers diaries and the ballot papers accounts. He informed him that both these documents were in the strong room and for that purpose the strong rooms would have to be opened. He gave permission for opening the strong room. Till that time it had not in his mind that there was any instruction of the Election Commission to send a report as stated above and the A.D.M. incharge had brought this to his knowledge. ADM incharge was the senior IAS Officer and he had deputed him to assist him (RW 12) in organising the election ADM incharge had also gone near the strong rooms to check the progress of the deposit of the ballot boxes in the strong rooms. He was in constant touch with the ADM incharge during that period.

35. The Returning Officer (RW 12) has further stated that he had to knowledge that the representative of Gen. S. K. Sinha was also there near the strong rooms when the strong rooms were opened but he was informed by Mr. T. N. Jha. To his knowledge it is not a fact that the representative of Gen. S. K. Sinha had gone to take mid day meal at the time when the strong rooms were opened. So far as he remembered, he had passed an order on the file to open the strong rooms. He did not remember the conversation between him and the Chief Electoral Officer which had taken place after the arrival of the Chief Electoral Officer in the strong rooms on the date of opening of the strong rooms. So far as he remembered, the Chief Electoral Officer had told him that he had arrived at the collectorate on the information received by Gen. S. K. Sinha regarding the opening of the strong rooms in order to verify as to why the strong rooms were opened. Relocking and resealing of the strong rooms had not taken place in his presence. He did not remember whether he had received any report regarding the relocking and resealing of the strong rooms. Apart from the cases of repoll there was no occasion in any election, in which he was concerned, where the strong rooms were opened after locking and sealing after the receipt of the ballot boxes and before counting of the ballot papers, except the present one. He could not say whether this document (marked as 'Z' for identification) had been sent to this Court from his office. He did not remember the exact date of opening of the strong rooms. He could neither except nor deny the suggestion that the strong rooms were opened on 26-12-1984. He had written letters to the Chief Electoral Officer explaining the circumstances in which the strong rooms had been opened but exact date he did not remember. He did not remember as to whether he had written to the Chief Electoral Officer that the Election Commission had directed that the ballot boxes should be kept in arranged manner in the strong rooms. After lapse of about four years, he could not say anything about the contents of any letter which he had written at that time. After the opening of the strong rooms he had written letters to the Chief Electoral Officer outlining the circumstances in which the strong rooms were opened. Precised wordings of those letters he could not recall. He was aware that the directions of the Election Commission were to scrutinise the ballot papers account, Presiding Officers' diaries etc. immediately on their receipt at the strong room. Photostat copy of letter No. 494/Elec. dated 20th March, 1985 was written on his dictation and bears his signature, which is marked as Ext. 1/16. The letter No. 490/Elec. dated 18th March, 1985 (Ext. 1/17) was typed on his dictation and bears his signature. The press note dated 26-12-1984 (Ext. 1/1) was also typed on his dictation and bears his signature. He further stated that the aforesaid press note (Ext. 1/1) was issued because certain statements had appeared in the newspapers purporting to be by certain candidates making some allegations with respect to the opening of the strong rooms. He did not remember the exact date on which that news had appeared in the newspapers, but it might be a day after the opening of the strong rooms. He did not remember the time when he had issued the press note. According to him, most probably the news regarding the opening of the strong rooms had appeared in the newspapers on 27-12-1984. After some pause he (R.M. 12) answered that some press correspondents had informed him that complaints with respect to the opening of the strong rooms had been made available to the press for publication in the newspapers. He further stated that correspondents of several newspapers had contacted him in this connection. He did not

remember about the details of the interview held by the press correspondents with him. He had met the correspondents who had come to meet him. He did not remember as to who they were but they were from almost all the newspapers. Many of the correspondents had come together, it was not a press conference. The Press Correspondents had come to meet him to know that what had happened regarding the opening of the strong rooms. He had explained the circumstances to the press reporters in which the strong rooms had been opened. By way of abundant precaution he had issued that press note just after meeting with the press reporters so that he might not have been misquoted. He did not remember as to who had given the press note for publication. In the press note he had quoted the letters of the Election Commission in which the directions had been given for scrutiny of the Presiding Officers' diaries, ballot papers accounts etc. In the press note he had also transcribed the brief purport of the directions of the Election Commission and the relevance of the Rules, referring to the opening of the statutory packets, is that it was a part of the directions of the Election Commission received by those letters, the summary of which he had given in the press note. There was no complaint with regard to the statutory packets. He did not know the signature of Gen. S.K. Sinha but he remembered that some complaints had been received from various candidates. He remembered that Gen. S. K. Sinha had made complaints that some ballot papers had been found outside some booth in Patna City. He asked the Assistant Returning Officer of the concerned assembly constituency to enquire into the matter and take necessary action. The complaints through the letter (Ext. 1/3) were not received by the Receiving Officer in his presence, hence he could not say as to whether the four ballot papers were also received along with that letter by the Receiving Officer and without looking to the office records he could not say what steps were taken by him with regard to the safe custody of those ballot papers if any. If anything would have been found missing, while he would have been incharge of the office of the District Magistrate and the Returning Officer in course of the election, the ultimate responsibility would have been his in case anything connected with the election would have been found missing. He furnished the materials for answering parliamentary question on this subject, i.e., relating to the opening of the strong rooms. He said after referring to his letter (Ext. 1/16). The materials furnished by him with respect to the parliamentary question No. 'C' were based on the scrutiny of papers made on 26-12-1984 as also other informations made available to him upto the point of furnishing that reply. In hundred two booths there was 90 per cent poll and in two booths the poll was cent per cent and with respect to that he had instructions from the Election Commission—whether those votes cast on those booths should be counted or not. He waited for the instruction of the Election Commission. There were about 1277 booths in '35-Patna Parliamentary Constituency'. There were 1186 booths in Barh Parliamentary Constituency. The Election in Barh Parliamentary Constituency was also held on 24-12-1984. Same procedure was followed with respect to Barh Parliamentary Constituency, regarding reception of the ballot boxes and for their safe custody and that of the papers received from the Presiding Officer, as followed in Patna Parliamentary Constituency. Rule and procedure as referred to in paragraph-4 of his deposition were also followed in Barh Parliamentary Constituency. The strong rooms for Barh Parliamentary Constituency were in Shrikrishna Memorial Hall, Patna, which is also in the vicinity of the Patna Collectorate. He did come across at some booths' ballot boxes in which there appeared to be stacking of the ballot papers, i.e., the ballot papers were placed one upon other in a manner in which it would not be possible if a ballot paper be dropped individually through the slit in the ballot boxes. He had personally found the ballot papers stacked in the ballot boxes at some booths at the time of counting. Such ballot papers were not counted under his order. Without looking into the concerned case records with respect to particular booth regarding stacking of the ballot papers, he cannot say what order had been passed in appeal. He did not remember as to whether any complaint as contained in Ext. 1/6 was made before him. He knew that Mr. B. P. Singh was deputed as the central observer with regard to the election in the Parliamentary Constituencies, including Patna Parliamentary Constituency. He had stated that the Central Observer had visited several Pandals at the time of counting of the ballot papers but he

did not know as to whether he had visited the counting Pandals on the complaint made by Gen. S. K. Sinha or it was his usual visit in course of observation of the fair counting of the ballot papers. He had distributed the works relating to the election amongst the different officers, allotting them particular work. Preparation for the conduct of the election takes sufficient time. Preparation for the conduct of the election had started more than a fortnight in advance. He did not remember as to whether only the staff of the Census Department were chosen for being deployed in the election of '35 Patna Parliamentary Constituency'. He did not remember the dates of the counting of the ballot papers. The staffs were deputed for counting of the ballot papers under his orders by the officer, who was in charge of the personnels and had been deputed by him. Approximately two weeks ago the officer, in charge of the personnels, might have been deputed by him. He did not recollect as to whether Gen. S. K. Sinha had made a request that the counting should be done under the supervision of the officers, other than the officers of the Bihar Government. He had accompanied Shri B. P. Singh, the Central Observer, during his visit to the counting halls. He had seen stacking of the ballot papers in some ballot boxes but at that time he was with Shri B. P. Singh or not, he could not say.

37. The Returning Officer (R.W. 12) has further deposed that the order contained in Ext. 1/8 is exactly in accordance with his directions. It was not his duty, as the Returning Officer, to look into the instances of booth capturing, including the instances of stacking of ballot papers in the ballot boxes in certain booths. The Assistant Returning Officers were authorised to look into such matters and pass necessary order. He as a Returning Officer was to look into those matters only in appeal, preferred against the orders of the Assistant Returning Officer. Except in the case of appeal, it was not his business to look into such instances even if that came to his notice, apart from directing the Assistant Returning Officer to look into the matter and pass necessary orders in that regard. Whenever any complaint regarding the election was received by him that used to be passed on to the Assistant Returning Officer concerned for enquiry and necessary orders. The ballot boxes in which ballot papers were found stacked, were kept apart and the ballot papers of those ballot boxes were not counted. Accounting with respect to those ballot boxes have also been maintained. It is not a fact that he of his own accord had issued the press note to be published in the newspaper to mislead the people. He did not recall as to which Pandals were visited by Shri B. P. Singh, the Central Observer. He had explained the circumstances to the Chief Electoral Officer in writing in which the strong rooms had been not opened by him. He did not remember whether the Chief Electoral Officer had forwarded his explanation to the Election Commission. He did not remember whether the Election Commission had found the explanation for opening of the strong rooms to be unconvincing. He was also Returning Officer in Assembly Election, which was held after the parliamentary election. He did not remember as to whether he had received any instruction prior to the Assembly election from the Election Commission that the strong rooms in which the ballot boxes are kept, in no case shall be opened without the permission of the Election Commission, prior to the counting of votes. He was not aware of the fact that late Ramavatar Shastri who was also a contesting candidates for '35-Patna Parliamentary Constituency' had made any complaint to the Election Commission regarding the instructions. It is also not correct to say that he deliberately kept himself away from the strong rooms to escape his conscience. There was no manipulation or tampering with the ballot boxes in the strong rooms. It is not a fact that the Government of the Congress party and the Chief Minister were constantly in touch with him during the period of election to achieve the success of the respondent. It is also not a fact that the respondent was also in touch with him during the election. The Returning Officer further stated that it is not a fact that there was a deep conspiracy to achieve success of the respondent any how.

38. Here some admitted facts can be enumerated in order to cut short the matter.

27-11-84—Last date for filing nomination.

28-11-84—Scrutiny took place.

24-12-84—Poll held.

28-12-84)
29-12-84) Counting took place.

29-12-84—Result of Election declared.

The District Magistrate, Sri Raj Kumar Singh (R.W. 12) was the returning officer. The sub-divisional officer, Danapur, sub-divisional Officer, Patna Sadar, District Development Commissioner, Patna, D.C.L.R. Patna Sadar, D.C.L.R. Danapur and D.D.C. cum Chief Executive Officer, Patna were the six Assistant Returning Officer. Sri T. N. Jha, Welfare Officer, Patna, was the Officer incharge of the Strong Rooms. There were altogether 25 contesting candidates. The respondent Dr. C. P. Thakur was the candidate of Congress-I. Sri Ramavatar Shastri was the candidate of C.P.I. Sri S. K. Sinha was the independent candidate. Other contesting candidates were also independent. So far as votes polled are concerned total poll was to the tune of 5,04,781. The rejected vote was 9097. 2,14,989 votes were polled in favour of Dr. C. P. Thakur, the respondent, 1,42,808 votes were polled in favour of Sri Ramavatar Shastri and 1,17,537 in favour of Sri S. K. Sinha the election petitioner. Thus, margin of votes between the respondent and the election petitioner was 97,452. So far as votes secured by other contesting candidates are concerned they are not very much relevant and are not being mentioned. It is also admitted that votes of about 30 booths were not allowed to be counted by the Returning Officer awaiting the direction of Election Commission. But in view of the fact that even if the votes of those 30 booths were counted in favour of defeated candidate, the result of the election shall not be materially affected. Dr. C. P. Thakur was declared to be successful candidate.

39. Before taking up the issues it will be appropriate to see the scheme and scope of the Constitution of India and the Act relating to undoing the result of an election and declaring the election of successful candidate void. Article 329(b) of the Constitution of India envisages that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question of petitions, lays down that an election petition calling and in such manner as may be provided for by or under any law made by the appropriate Legislature.

40. Section 81 of the Act, which deals with the presentation of petitions, lays down that an election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of sections 100 and 101 of the Act to the High Court by any candidate at such election or any elector etc. So on one or more of the grounds specified in sub-section (1) of section 100 of the Act an election petition has been filed in this case.

Since there is no prayer in this petition that a candidate other than the returned candidate may be declared to have been elected, section 101 of the Act is not attracted. Obviously therefore this election petition is on the grounds specified in sub-section (1) of section 100 of the Act by a defeated candidate, i.e., the petitioner.

41. Section 100 of the Act lays down the grounds for declaration of election to be void, which are as follows :

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate has been materially affected—

- (i) by the improper acceptance of any nomination, or
- (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
- (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
- (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or order under this Act.

42. Corrupt practices have been defined in section 123 of the Act. The following shall be deemed to be corrupt practices for the purpose of this Act:—

(1) Bribery, that is to say,—

(A) any gift or promise by a candidate or his agent or by any other persons with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly,—

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature, or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation.—For the purpose of this clause the term 'gratification' is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at or for the purpose of, any election and duly entered in the account of election expenses referred to in Section 78.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right;

Provided that—(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this Clause.

(b) A declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this Clause.

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate :

Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purpose of this Clause.

(A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election or any candidate.

(4) The publication by a candidate or his agent or by any other person, with the consent of a candidate, or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll :

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power;

Provided further that the use of any public transport, vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.—In this clause, the expression 'vehicle' means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(6) The incurring or authorising of expenditure in contravention of section 77.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election from any person in the service of the Government and belonging to any of the following classes, namely:—

(a) gazetted officers;

(b) stipendiary, judges and magistrate;

(c) members of the armed forces of the Union;

(d) members of the police forces;

(e) excise officers;

(f) revenue officers other than village revenue officers known as lambradars, malguzars, patels, desh mukhs or by any other name, whose duty is to collect land

revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police function; and

(g) such other class of persons in the service of the Government as may be prescribed;

Provided that where any person, in service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or an other person acting with the consent of the candidate or his election agent, (whether by reason of the office held by the candidate or for any other reason), such arrangements facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election;

Explanation.—(1) In this section the expression 'agent' including an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purpose of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent of that candidate.

(3) For the purpose of clause (7), notwithstanding any thing contained in any other law, the publication in the official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union territory) or of a State Government shall be conclusive proof—

(i) of such appointment, resignation, termination of resignation, termination of service, dismissal or case may be, and

(ii) where the date of taking effect of such appointment resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service, such person ceased to be in such service with effect from the said date.

43. Now I take up issues for consideration.

Issue Nos. (i) and (ii) are taken up together since they are inter-connected. The election petition is not barred by limitation, has been presented before an appropriate forum. A preliminary objection was raised by filing a petition under section 86(1), read with section 82 of the Act by the respondent with a prayer to dismiss the election petition under section 86(1) of the Act for non-compliance of section 82 of the Act. This petition was considered by order dated 2-5-1986 and it was found that there has been no violation of section 82 of the Act and was rejected. Nothing has been brought on the record that there has been non-compliance of section 117 of the Act. So far as violation of provisions of section 83 of the Act in concerned, it has been alleged on behalf of the respondent that in absence of the material facts as regards the allegations made by the petitioner in the election petition particularly on the fact of the result being materially effected being not given in the election petition, there is violation of the mandatory provisions of section 83 of the Act and on this account also the election petition is fit to be dismissed. But from the perusal of the election petition it appears that concise statements of material facts on which the petitioner relies have been mentioned and some particular facts are mentioned in the annexure. Thus on this account it cannot be said that there has been violation of section 83 of the Act. The learned counsel appearing for the respondent Mr. K. P. Verma, has, however, contended that this election petition is not maintainable since the allegations made by the petitioner do not attract the provision of sections 100 and 101 of the Act. On this score also this election petition is fit to be dismissed. In reply thereto learned counsel appearing for the petitioner, Mr. K. D. Chatterjee,

has submitted that some of the allegations put forward by the petitioner are covered by section 100(1) (b) and (d) (iv). Thus this submissions require due deliberation which will be done at an appropriate stage. Therefore, on this account it cannot be said that the election petition is not maintainable.

44. Issue Nos. (ii) and (iv) are also inter related and, hence, they are being dealt with together. There is no denial on the fact that the strong room in which the ballot boxes, Presiding Officers' diary and Form 16 etc. were kept, was opened as alleged by the petitioner. In this connection the petitioner has stated that in the evening of 24th of December, 1984, after all the ballot boxes were to be brought to the strong rooms in the Collectorate he had visited that area and found that it had been fenced all around with barbed wire. There was a gate in the south facing road in the fence. He has also given description of the strong rooms. He has further said that he had requested through a letter (Ex. 1) for allowing him to have a watchman to look after the strong rooms and also to allow the watchman to put his seals on the locks of the strong rooms. He got permission as per letter dated 23-12-1984 but the watchman was not allowed to enter inside the gate and, therefore, he could not affix the seals on the locks of the strong rooms. Rajesh Chandra Sinha (PW-1) was the watchman. He has said that he was assigned the duty of watchman for keeping watch over the strong rooms. From his evidence it appears that there were some other persons who were assigned the duty of watchman but they have not been examined. Another watchman was also not allowed to enter inside the campus by the police rawalwar who was posted there. Some reference has been made by this witness in the deposition regarding the statements of Nandial and other watchman but since Nandial and the other watchman have not been examined those statements cannot go in evidence. The petitioner has further stated that on 26th December, 1984 in the afternoon he went to the District Election Office with counting agents' forms and found that all the five strong rooms were opened. He was accompanied with his friend Bipin Bihari Sinha (PW-2). Further details of his statement in this regard I need not repeat since it has already been stated above. He found from para 14 of Chapter XIII of the hand-book for the Returning Officer that the strong rooms could only be opened after giving prior notice to the contesting candidates. Since no notice was given to him there had been violation of para 14 of Chapter XIII of the Hand-book for the Returning Officer. According to the petitioner action of the Returning Officer was unauthorised and in violation of the relevant rules and orders.

45. The respondent (RW-1) has stated in this regard that the sealed ballot boxes and the sealed covers containing the papers were kept in the strong rooms in safe custody by the Returning Officer. No seal of any candidates of that election of his constituency was put at the locks of the strong rooms. Seal of the Returning Officer was put at the locks of the strong rooms. None of the candidate or agents of any of the candidates were refused to put their respective seals at the locks of the strong rooms. He has further said that the Returning Officer had opened the strong room in compliance with certain orders of the Election Commission of India. At the risk of repetition I am again putting the statement of RW-12 which is relevant here. Raj Kumar Singh was the District Magistrate-cum-Returning Officer and has been examined as RW-12. In this connection he has stated that the strong rooms had been arranged for keeping the ballot boxes and the connected papers sent by the Presiding Officers. Receipt of the ballot boxes continued till the forenoon of 25-12-1984 from different booths. Mr. T. W. Jha was the incharge of the strong rooms. He had put seals at the lock of the strong rooms. No candidates had made any request to put his seal at the locks of the strong rooms. All the connected papers along with accounts of the ballot papers and the Presiding Officers' diary were kept on the ballot boxes of a particular booth in the strong rooms and that is the rule and practice as well and accordingly it was done. He was required to send report to the Election Commission of India and copy of the same to the Chief Electoral Officer, regarding polling of more than 90% votes at any polling booth as also about any incident of booth capturing. He sent report to the Election Commission after examining the Presiding Officers' diary and Form 16 with respect to the election in question. He

had received an application from Shri S. K. Sinha, the election petitioner to allow his representative to remain in front of the strong rooms all along till the ballot boxes were in the strong rooms which he had allowed but he could not give the exact time when the strong rooms were locked and seals were put because they were done by the officer concerned, who had been deputed for the purpose. The application of Shri S. K. Sinha was received by him on 25-12-1984 when the storage of ballot boxes in the strong room had been completed. The scrutiny of Form 16 and other connected papers with respect to the casting of votes were done by the Assistant Returning Officers who were six in number. He had not visited the strong rooms personally. He denied the suggestion that the strong rooms had been opened in order to tamper with the ballot boxes to help a particular candidate. These allegations were absolutely false and incorrect. There was no question of tampering with ballot boxes and it was never done in the strong rooms. Counting of 25 to 30 booths were not done since it had been stopped by him or by the Assistant Returning Officer. There were 600 to 100 voters at one booth. In cross examination he has made reference to a Hand-book of the Returning Officer containing all the instructions issued by the Election Commission of India. In answer to Court's question he has stated that there were instructions that the statutory and non-statutory packets were to be kept on the ballot boxes of the booth concerned at the top of the ballot boxes. At that time this aspect that those papers may be required for the purpose of information to the Election Commission before the counting of the ballot papers had not occurred to him. After the ballot boxes and connected papers had been kept in the strong rooms he had been told by the A.D.M. that the information may be required by the Election Commission regarding high percentage of votes and any other suspicious circumstances. In answer to counsel's question he has said that he was required to scrutinise the papers sent by the Presiding Officers before counting of the votes for information of the Election Commission but he knew about this instructions at a later stage. The scrutiny of the Presiding Officers' diaries and ballot papers accounts could not be done at the time of receipt of the ballot boxes and the connected papers since it was not possible in view of large number of polling party arriving at the headquarters. In view of the difficulties which was felt in course of the last election the election commission revised the procedure and directed that the additional copy of the Presiding Officers' diaries and account of votes should be prepared and that may be scrutinised after receipt of the ballot boxes and should not be kept in the strong rooms. These are the material facts relating to the opening of the strong rooms. In these circumstances the petitioner has suspected that there has been malpractices including substitution of ballot boxes and according to him, action of the Returning Officer and his staff in breaking open the seals of and entry into the strong rooms in which ballot boxes were stored was unauthorised and in violation of relevant rules and orders and, therefore, there has been infraction of instruction 14 of Chapter XIII of Hand-book for Returning Officer issued by the Election Commission of India, and therefore, provision of the Constitution of India has been violated.

46. Much has been argued about the opening of the strong rooms. So far as strong room is concerned its concept is nowhere found neither in the Act or in the Conduct of Election Rules, 1961 (to be referred to as the Rules) nor in the Hand-book for Returning Officers issued by the Election Commission of India. Of course sub-rule (2) of Rule 47 of the Rules provides that the Returning Officer shall make adequate arrangements for the safe transport of all ballot boxes, packets and other connected papers and for their safe custody until the commencement of the counting of votes. Para 14 of the Hand-book deals with the safe custody of ballot boxes after poll. So according to the Rules and the guidelines given in the Hand-book for Returning Officer the word 'safe custody' has been used but for the sake of convenience the Returning Officers call the place used for safe custody as strong rooms.

Reference has been made by the learned counsel appearing for the petitioner to Clause (f) of guideline 14 of the Hand-book wherein it is provided that if any of the contesting candidates so desires he may be permitted to post an agent to keep watch at the places where the ballot boxes were

stored and also allow him to affix his own seal to the doors and windows of the buildings in which ballot boxes have been stored in addition to seals that may be affixed by the Returning Officers. It should also be answered that after all the ballot boxes have been received and stored and the room has been locked, no one should be allowed to go in until the morning of the day fixed for counting. If during this interval, for some reasons or other, the room has to be opened, the Returning Officer should send for the candidates or their authorised representatives and open the room in their presence and immediately after the purpose, for which the room is opened is over, the candidates or their representatives should again be allowed to seal the door and window. Whenever it is necessary to open the room where the ballot boxes are stored, proper entries should be made in the log book giving details of the persons entering the room, the purpose of such entry, time of entry, time of exit, signature of the guards etc.

47. Thus from the aforesaid guidelines it would appear that there is no bar to the opening of the strong rooms. Only certain formalities as indicated above are to be observed by the Returning Officer. So far this petitioner is concerned his representative was posted near the strong room to keep watch. No other contesting candidates appear to have either requested to put their own seal or to allow a guard to be posted there on their behalf, RW-12 has said that since the agent of the petitioner was guarding near the strong rooms he did not consider it necessary to inform the candidate personally. He has further said that he had never refused to the agent of the petitioner who was there to put his own seal as well. The purpose for which the strong room was opened that has been explained by the Returning Officer. I do not find any justification for not accepting the explanation of the Returning Officer for opening the strong rooms. Therefore, his action in opening the strong rooms cannot be said to be unauthorised. Taking the worst view that some of the instructions as contained in Clause (f) of guideline No. 14 of the Hand-book for Returning Officers have not been complied with, a question will arise whether it will amount to non-compliance with the provision of the constitution. The learned counsel appearing for the petitioner has contended that since this handbook has been issued by the Election Commission of India it will be deemed that any direction contained in this handbook shall be deemed to be the provisions of the Constitution. I am unable to accept this contention. Article 324 of the Constitution lays down that the superintendence, direction and control of the preparation of the electoral rolls for and the conduct of all elections, to Parliament and to the Legislature of every State and of elections to the office of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission). There is nothing in the Constitution that any direction given by the Election Commission will have the same status as that of constitutional provision. Apart from that the handbook concerned which has been referred to by the learned counsel appearing for the petitioner is the handbook for Returning Officers and on the very title page it is printed "for official use only". This indicates that these are the internal guidelines given to the Returning Officer by the Election Commission which will have no statutory force. So, any violation of the guidelines given to the Returning Officer by the Election Commission which will have no statutory force. So, any violation of the guidelines laid down in the handbook can not be said to be non-compliance with the provisions of the Constitution.

The other allegation is that the directive of the election commission contained in paragraph 20 of Appendix 2 letter No. 646/84 (LNO) dated 6-11-1984 which has been marked as Ext. 6 was not complied with which inasmuch as whenever in any case more than 90% poll was found the same should not have been allowed to be counted in absence of the permission of the Election Commission.

48. From the deposition of petition (PW-1) it would appear that he has himself admitted that the allegations as mentioned above are based on the instructions issued by the Election Commission and not on the basis of any provision contained in the Representation of People Act and conduct of election rules. The fact which has emerged

from the election petition and evidence of the petitioner that whatever allegations have been made by the petitioner relating to the opening of the strong rooms and counting of the ballot papers are not based on any provision of the Representation of People Act, or Rule or order made thereunder or provisions of the Constitution but on the instruction of the Election Commission issued to the Returning Officer. Section 100(1)(d) (iv) of the Act reads as follows :

"That the result of the election, in so far as it concerns a returned candidate, has been materially affected by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void."

It is needless to point out that challenge of any election under this Act can be made only within the purview of section 100 of the Act and not beyond. In the present case it is found that the election of the respondent has been challenged not on the ground of any violation of the provisions of the Act. It has neither been challenged for violation of any order passed under the Act or provision of any Rule made under the Act or the provisions of the Constitution of India. The Challenge has been made on the ground of the violation of two instructions issued by the Election Commission mentioned earlier. On this ground there is no provision in section 100 to challenge the election. The guideline given in the handbook and the letter referred to above may be binding on the Returning Officer for administrative purpose but the same is not binding on the people and the candidates. In the case of *Lakshman Charan Sen and others Vrs. A. K. M. Hussain Uzzaman and others* (A.I.R. 1985 Supreme Court 1233) this point has been set at rest. It has been held as follows :

"One of the questions which was debated before us and to which we must now turn, is whether the directions given by the Election Commission to the Chief Electoral Officers have the force of law under the Acts of 1950 and 1951. There is no provision in either of these Acts which would justify the proposition that the directions given by the Election Commission have the force of law. Election Laws are self contained codes. One must look to them for identifying the rights and obligations of the parties. Whether they are private citizens or public officials. Therefore, in the absence of provision to that effect, it would not be correct to equate with law, the directions given by the Election Commission to the Chief Electoral Officers. The Election Commission is, of course, entitled to act *ex debito iusticia*, in the sense that, it can take steps or direct that steps be taken over and above those which it is under an obligation to take under the law. It is, therefore entitled to issue directions to the Chief Electoral Officers. Such directions are binding upon the latter but, their violation cannot create rights and obligations unknown to the election law. To take a simple example, if the Election Commission issues a directive to a Chief Electoral Officer to invite leaders of political parties for a meeting to consider their grievances pertaining to the electoral roll, the failure to hold such a meeting cannot be equated with the failure to comply with the provisions of a law. Leaders of political parties who were asked to be invited by the Election Commission cannot challenge the process of election on the ground that the directive issued by the Election Commission was violated by the Chief Electoral Officer. The question is not whether the directions issued by the Election Commission have to be carried out by the Chief Electoral Officers and are binding upon them. The plain answer is that such directions ought to be carried out. The question is whether, the failure on the part of Chief Electoral Officer to comply with the directions issued by the Election Commission furnishes any cause of action to any other person, like a voter or a candidate, to complain of it. We are of the opinion

that the directions issued by the Election Commission, though binding upon the Chief Electoral Officers, cannot be treated as if they are law, the violation of which could result in the invalidation of the election, either generally, or specifically in the case of an individual."

Similar view has been expressed relying on the aforesaid case in Election Petition no. 19 of 1985 *Choudhary Jangi Singh vrs. Smt. Sum tra Devi and another* by the Patna High Court. Thus, the opening of the strong rooms and non-compliance or improper compliance of certain guidelines laid down in the Handbook for the Returning Officers and the letter (Ext. 6) do not come within the purview of section 100 (1)(d) (iv) of the Act.

49. Yet another aspect of the matter is that for bringing the case within the purview of section 100(1)(d) (iv) of the Act the petitioner has to demonstrate that the result of the election has been materially affected by such non-compliance. The petitioner has not come out with a clear case that in course of the opening of the strong rooms some ballot boxes were substituted in place of other ballot boxes in order to help the respondent. He has merely shown suspicion in this regard but for this there should have been a positive case. There is no evidence of tampering with the ballot boxes as well since it has come in evidence that there used to be three seals on the ballot boxes, one within the ballot boxes, i.e. paper seal then another seal on the slit of the ballot boxes and 3rd seal on the covering of the ballot boxes. According to the evidence, only one seal on the cover of a ballot box was found missing and other seals were intact. So, in these circumstances, it can be not be said that the ballot boxes had been tampered with.

50. Coming back to the putting of the seal the petitioner's grievance is that he was not allowed to put his seal. I find that there is no evidence that at the time of sealing the look the petitioner was present there and he made request to allow also to put his seal which was refused by the Returning Officer. Thus, it is clear from the evidence of R. W. 12 that due to some unavoidable circumstances he had to open the strong rooms. Of course if the Returning Officer would have been more careful he could have scrutinized the required papers in the very beginning while the strong room was being initially closed. But he has explained the circumstances as to why he could not do this and further he was ignorant at that time that the report would have to be sent to the Election Commission after scrutinising Form-16 and Presiding Officers' diaries, which he was told later by the A.D.M. Regarding information to the petitioner with respect to the opening of the strong rooms, the Returning Officer (R.W. 2) has categorically stated that the agent of the petitioner was watching the strong rooms and he was informed, who, in his turn gave information in the office of the petitioner regarding opening of the strong rooms. Another aspect is that when the petitioner along with the Chief Electoral Officer visited the strong rooms they did not find any mischief being committed in the strong rooms except that the petitioner has stated that he saw papers in the hand of some officers and heard sound of metallic boxes being removed and kept but this part may be his mere conjecture and surmises. Such facts require positive proof. Bonafide of the Returning Officer is also clear from the fact that he issued a press note with reference to the opening of the strong rooms explaining the position after coming across the news of opening of the strong rooms in some newspapers. The petitioner has himself admitted that it was the duty of the Returning Officer to examine the documents and submit a report to the Election Commission. Whatever the Returning Officer has done he has done in discharge of his duty.

51. According to the petitioner the strong room was opened without securing the presence of the petitioner with some motive. The ballot papers were found to be stacked and also some ballot papers were received near Pathar-ke-Masjid and thus it would be presumed that the strong room was opened for the purpose of helping the respondent and for the purpose of tampering the contents of the ballot boxes. The ballot papers are bigger in size, i.e., in length than the ballot boxes. So, the ballot papers cannot be stacked with-

out being folded. It has come in evidence that ballot papers are folded after marking and thereafter the same is inserted through the slit of the ballot boxes and they are to be pushed inside the ballot boxes. The learned counsel appearing for the petitioner has contended that it is a matter of common experience that the folded ballot papers are carefully arranged with the help of the pushers by the polling officer and if that was done it cannot be said that there was only motive because of which the ballot paper was so arranged inside the box. The result sheet (Ext. A) indicates that there were two cases of alleged stacking relating to two booths. In one booth about 50 votes have been received by Shri Ramavater Shastri and in another booth similar number of votes have been received by the respondent. So even if the votes of the two booths are ignored the result of the election will not be affected in any manner. Issue nos. (iii) and (iv) are answered accordingly.

52. Issue no. (v).—Evidence has been led on behalf of the petitioner that eight ballot papers were found in a bush. There is no guarantee regarding the genuineness of these ballot papers. Neither the press has been examined nor the printing of the ballot papers has been proved. Unless the genuineness of the printing of the ballot papers is not proved it cannot be presumed that they were the genuine ballot papers issued by the Returning Officer for the use at the poll. Beside it has not been proved by the petitioner with the help of Form-16 and the diaries of the Presiding Officer that the alleged ballot papers were connected with any booth. Two children said to have collected such ballot papers from same booth have also not been examined. According to the learned counsel appearing for the respondent this is a cock and bull story. Those ballot papers could have been taken away by any voter without casting vote and further that even if those ballot papers are added to the number of votes of the petitioner the result of the election will not be affected.

53. Issue no. (vi).—Allegations have been made that on six booths mentioned in the election petition there has been more than 90 per cent poll. According to the petitioner, there was instruction of the Election Commission to set apart counting of such booths till further order of the Election Commission. It has been rightly conceded on behalf of the petitioner that on three booths he secured more than 90 per cent votes. The further contention is that this happened because he was very much popular in that area and, therefore, the voters preferred to vote without being absent. So far as the respondent is concerned it has been alleged that high percentage of votes secured by him was not fair and, hence, it should not have been counted. The learned counsel appearing for the respondent has rightly contended that double standard in this matter cannot be applied if the petitioner was popular in some area, according to the evidence and even on the admission of the petitioner, the respondent had also been serving the constituency since long as a medical practitioner and his contribution in the field of health was super. So far as the petitioner is concerned he has admitted in his evidence that during the whole tenure of service he was in Bihar at Ramgarh for a very short period. Thus, only high percentage of voting is not enough in law to over-rule the counting and after scrutinising the ballot papers accounts and the Presiding Officers' diaries, the Returning Officer had directed to count those votes as well. Taking the worst view if the votes of those booths would not have been taken taken into consideration that would not have changed the result of the election. The provisions of rule 56 of the Conduct of Election Rules provides that the Returning Officer has to reject or accept the ballot paper. Under this Rule there is no provision that if there will be 90 per cent of votes in a booth in favour of a particular candidate the Returning Officer will reject the ballot papers. Similarly there is no provision in this Rule that if there will be allegation of stacking of ballot papers the same would be rejected. Thus there was no irregularity in the counting of votes. Issue no. (vi) is accordingly answered.

54. Issue no. (vii).—There is no evidence on the record that any booth was captured on behalf of the respondent. Of course, some witnesses have been examined on behalf of the petitioner. Ramesh Akhauri (PW-3) has stated that his agents were not allowed to go inside on several polling booths. After protest by S. K. Sinha they were allowed to go inside the booths. He has further stated

that he saw dozen of Jeep with Congress-I flag banner plying without any obstructions and further that polling was disturbed at Kankarbagh booths. Upendra (PW-8) was severely assaulted at Rajendra Nagar booth, P.W. 8. Upendra, has stated that he was polling agent at booth no. 111 at Kadamkuan, Patna. Congress-I candidates were casting bogus votes by impersonating other voters. When he raised objection he was abused and assaulted. He was taken to Kadamkuan P.S. and submitted written report there. He was admitted as an indoor patient at PMCH vide bed head ticket No. 517 and discharged on 27-12-84. He said that he cannot name any Congress-I workers who were at booth no. 111. In his cross-examination he has stated that he did not file any case before police. There is no other evidence on the point of booth capturing. Therefore, the allegation that large number of booths were captured on behalf of respondent no. 1 has not been established. This could have been proved easily with the help of Presiding Officers diary but the same has not been done for the reason best known to the petitioners counsel. This issue thus answered.

55. Issue no. (viii), whether respondent is guilty of corrupt practices : I have already quoted in extenso the corrupt practices as set forth in section 123 of the Act. The learned counsel appearing for the respondent has submitted that the allegations of the petitioner, as contained in the election petition, did not attract the definition of corrupt practices as set forth in sub-section (7) of section 123 of the Act and there is complete want of evidence on behalf of the petitioner on this point. For bringing the operation of section 123 (7) of the Act, it is necessary to show as regards obtaining or procuring the assistance of Gazetted Officer for the furtherance of the prospectus of the election of the candidate. Nothing has been brought on the record by way of evidence as regards obtaining or procuring any assistance by the respondent of any Gazetted Officer. Neither any manner or any occurrence relating to the obtaining or procuring of assistance has been given in the election petition or in evidence. From the evidence no circumstances has been brought on the record to show the movement, association or relation or any activity of the respondent with any officer. In such a situation, the provisions of section 123(7) of the Act is not at all applicable.

56. The learned counsel appearing for the petitioner has relied on the case of Mohinder Singh Gill and another vs. the Chief Election Commissioner, New Delhi and others (AIR 1979 Supreme Court 951). This case arose out of a writ petition filed in the High Court under Article 226 of the Constitution of India. The allegation of the writ petitioner was that some ballot papers which were being carried from the booths were tampered and destroyed, as a result of which the Returning Officer as well as the observer of the Election Commission reported the matter to the Election Commission and the Election Commission directed repoll of the booths. The grievance of the petitioner was that the direction of the Election Commission was in violation on provisions of section 58 of the Act because therepoll should have been held on these booths of which the ballot papers were tampered or removed. The writ petition was dismissed and the special leave petition was filed in the Supreme Court. The Supreme Court after examining all the matters held that in view of the provisions of Article 329 of the Constitution of India, the petitioner has got the remedy before the High Court by filing an election petition after the result is declared taking all the points he wanted to take in accordance with law and the special leave was dismissed with an observation that any observation made by the courts concerning the case will not be of any effect while deciding the election dispute, if any when filed, after final result is over. In view of the aforesaid facts the aforesaid decision is not at all relevant for the purpose of the present case.

57. The learned counsel appearing for the petitioner has also relied on the case of S. Raghubir Singh Gill vs. S. Gurucharan Singh Tohra and others (AIR 1980 Supreme Court 1362). This case arose out of an election of Council constituency. The issue was relating to four postal ballot papers. The allegation was that the postal ballot papers in the post office were tampered and the first preference was changed into second preference. The petitioner was defeated only by two votes. His contention was that if the four ballot papers are counted as first preference to him, he would be declared elected. In the circumstances, a question arose

before the court as to whether the ballot papers could be inspected in view of the provisions of section 94, of the Act, which provides that no witness can be asked as to whom he had voted. On this basis it was contended by the lawyer of the other side that the ballot papers could not be inspected. The Supreme Court interpreted after examining section 100 of the Act and observed that the Courts has to give a finding as regards acceptance or rejection of any ballot papers. According to the provisions of section 101(1)(d)(iii) of the Act and in the Court is not deciding the point as to who actually get the majority of the valid vote, the purity of election would not be maintained. On the other hand the Court held that maintenance of secrecy for free and fair election is necessary. Hence in view of the provisions of section 94, read with section 100, of the Act it was concluded that though free and fair election is necessary, still the purity of the election has to be maintained as provided under section 100 of the Act.

58. In none of the aforesaid cases, it has been decided that the election can be set aside even beyond the provisions of section 100 of the Act. No doubt the purity of the election is of paramount consideration as argued by the learned counsel for the petitioner, but that purity of the election has to be tested within the four corners of law. Provisions have been laid down in the Act and Rules made thereunder and by issue of orders to insure the purity of the election. Thus the corrupt practices as alleged against the respondent have also not been established.

59. Issue no. (ix) According to the petitioner's case respondent, who was a doctor, was a Government servant at the time of filing nomination and therefore he was not validly nominated. Respondent, who has examined himself as R.W.1, has stated that he had resigned from the Government service before filing the nomination, which had already been accepted. There is nothing on the record to controvert this aspect on behalf of the petitioner. In these circumstances it has to be held that the respondent was validly nominated.

60. So far as issue nos. (x) and (xi) are concerned, which relate to the striking of certain paragraphs of the election petition on the grounds as mentioned in these issues, I do not propose to record any finding with respect to them in view of my findings regarding other issues on the basis of which this election petition has to fail.

61. In view of my findings with respect to the different issues in the case, I do not find any merit in this election petition. This election petition is accordingly dismissed. In the circumstances of the case, the parties shall bear their own costs.

62. Let the substance of the decision be communicated to the Election Commission and the Speaker of the Lok Sabha immediately and let an authenticated copy of the decision be sent to the Election Commission as soon as possible.
Patna High Court,

BINODANAND SINGH, Judge

The 20th April, 1990.

[No. 82/BR/(2/85)/90]

By Order

BABU RAM, Under Secy.

नई दिल्ली, 31 दिसम्बर, 1990

आ. अ. 2.—निर्वाचन आयोग 1990 की सिविल अपील सं. 5432 और 5424 (एन सी ई) में भारत के उच्चतम न्यायालय के तारीख 6-12-90 के आदेश की लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 116(ग) के अनुसरण में इसके द्वारा प्रकाशित करता है।

संसदन आदेश अंग्रेजी में छापें हैं।

[सं. 82/असम-राज्य सभा/23-89-90]

आदेश से,

के.पी.जी. कुट्टी, सचिव

New Delhi, the 31st December, 1990

O.N. 2.—In pursuance of Section 116-C of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order of the Supreme Court of India dated 6-12-90 in Civil Appeal Nos. 5423 & 5424 (NCE) of 1990.

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

INTERLOCUTORY APPLICATION NO. 2

(Application for Stay with a prayer for an ex-parte Order)

IN

Civil Appeals Nos. 5423 & 5424 (NCE) of 1990 (Appeals U/S 116-A of the Representation of the People Act 1951 from the Judgment and Orders dated the 7th November, 1990 of the High Court of Gauhati in Recrimination Petition No. 18 of 1989 in Election Petition No. 23 of 1989).

Shri Amrit Lal Basumatari,
49, North Avenue, New Delhi

.....Appellant in both the
Appeals abovementioned

Versus

1. Shri Abdul Muhib Mazumdar,
73, Old MLA Hosted, PO Dispur,
Distt. Kamrup, Guwahati-6(Assam).
2. Shri Hiteswar Saikia, PO Dispur,
Guwahati-6 (Assam).
3. Shri David Ledger, PO Barpeta Road,
Distt. Barpeta (Assam).

.... Respondents in both the
Appeals above-mentioned.
6th December, 1990

CORAM :

Hon'ble Mr. Justice K. N. Singh.

Hon'ble Mr. Justice N. D. Ojha.

For the Appellant :

Mr. K. K. Venugopal, Senior Advocate, (M. S. Lira
Goswami & Mr. D. N. Mishra, Advocates with him)

No. 2

For the Respondents

Mr. L. M. Singhvi, Senior Advocate.

(M/s. S. K. Nandy & S. Banerjee, Advocates with him).

The application for stay above-mentioned being called on for hearing before this Court on the 6th day of December, 1990. Upon hearing Counsel for the appearing parties herein. THIS COURT DOETH ORDER.

1. That pending the hearing and final disposal by this Court of the application for stay above-mentioned after notice the operation of the Orders dated the 7th November, 1990 of the Gauhati High Court passed in Election Petition No. 23 of 1989 and in Recrimination Petition No. 18 of 1989 in Election Petition No. 23 of 1989 setting aside the appellant's election and declaring the Respondent No. 2 as duly elected member of the Rajya Sabha be and is hereby stayed;

(2) That the appellant herein is permitted to attend the Rajya Sabha and sign the Register but he shall not be en-

titled to participate in the proceedings or exercise his right to vote or draw any remuneration.

And this Court doth further order that this order be punctually observed and carried into execution by all concerned.

Witness the Hon'ble Shri Ranganath Misra, Chief Justice of India at the Supreme Court, New Delhi dated this the 6th day of December, 1990.

A. L. JAIN, Duty Registrar
[No. 82/AS-RS/23/89-90]

By Order,

K. P. G. KUTTY, Secy.